

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
VOLUME PRICING CONTRACT
XIOtech Corporation

This **VOLUME PRICING CONTRACT** for the acquisition of XIOtech Corporation products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and XIOtech Corporation, with its principal place of business at 6455 Flying Cloud Drive, Eden Prairie, MN 55344.

1. Contract Scope and Term

This Contract sets forth the terms and conditions governing the acquisition of XIOtech products and related services. Terms used in this document shall have the meanings set forth below in Section 2, Definitions. This Contract is available for use by all Customers.

The term of this Contract shall be two (2) years commencing on the last date of approval by the parties. Prior to expiration of the original term, the parties may renew this contract, upon approval of DIR, for up to two (2) optional one-year terms. Upon termination of this Contract, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made by Customers prior to such termination.

2. Definitions

Terms used in this Contract shall have the following meanings:

- A. DIR** - the Department of Information Resources.
- B. Customer** - any Texas state agency and local government as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003), and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.
- C. Manufacturer** - XIOtech.
- D. Reseller** - distributor, dealer, or value-added reseller designated by the Manufacturer who participates as a primary distribution source for the Manufacturer.
- E. Product** - any XIOtech Corporation item manufactured or produced by the Manufacturer. Product may include any pre-loaded software necessary for operation.
- F. Services** - any value-added service that the Manufacturer and/or Reseller may perform as related to products available under this Contract. For example: warranty, support services, installation, and product training.
- G. State Contract Administrator** - the individual as appointed by DIR to administer this Contract on behalf of the State of Texas and the Customers.
- H. Manufacturer Contract Administrator** - the individual as appointed by the Manufacturer to administer this Contract on behalf of the Manufacturer and Resellers.
- I. Administrative Fee** - the fee used to defray DIR's cost of negotiating, executing and administering this contract.
- J. Purchase Order** - the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
- K. Information Resources Technology (Technologies)** - as defined in Texas Government Code §2054.003.

- L. Day** - shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- M. State** – refers to the State of Texas.
- N. Go DIRect Coordinator** – refers to the individual appointed by DIR to administer and collect the contract reporting data on behalf of the State and the authorized Customers.

3. Entire Agreement and Order of Precedence

This Volume Pricing Contract; Appendix A, Standard Clauses for Texas DIR Contracts; Appendix B, HUB Subcontracting Plan; Appendix C, End User License Agreement; Appendix D, End User Support Plan Agreement; Appendix E, Pricing Index; and the Invitation to Negotiate DIR-BUSOP-TMP-010 shall constitute the entire agreement between the parties hereto. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Volume Pricing Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E and finally the Invitation to Negotiate. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by both parties hereto, with the approval of DIR.

Customers shall not have the authority to modify the terms of this Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are acceptable to the Manufacturer or Reseller may be added in a Purchase Order and given effect. No additional term or condition of a Purchase Order issued by a Customer can weaken a term or condition of the Contract. In the event of a conflict between a Customer's Purchase Order and the Contract the Contract term shall control.

4. Product and Service Offerings

Products available under this Contract are set forth as any Information Resource Technology item manufactured and produced by the Manufacturer. Services include any value-added service that the Manufacturer and/or its Reseller may perform as related to products available under this Contract.

A. Products

Manufacturer will maintain a product list including pricing, product descriptions, and product specifications for all products offered under this Contract. The product list may be updated at any time during the term of this Contract to incorporate product model changes or product upgrades, addition of new products, and removal of obsolete or discontinued products.

B. Services

Examples of service include, but are not limited to: warranty, support services, installation, and product training. Manufacturer will maintain a list including pricing and descriptions for all services offered under this Contract. The services list may be updated at any time during the term of this Contract to incorporate changes to the service offering.

5. Contract Administration

DIR and the Manufacturer will each provide a Contract administrator to support this Contract. Information regarding the Contract administrators will be posted on the Internet web site designated for this Contract.

A. State Contract Administrator

DIR shall provide a Contract administrator whose duties shall include but not be limited to: i) supporting the marketing and management of this Contract, ii) advising DIR of Manufacturer's performance under the terms and conditions of this Contract, and iii) periodic verification of product pricing and monthly reports submitted by Manufacturer.

B. Manufacturer Contract Administrator

Manufacturer shall provide a dedicated Contract administrator whose duties shall include but not be limited to: i) supporting the marketing and management of this Contract, ii) facilitating dispute resolution between a Reseller and a Customer, and iii) advising DIR of Resellers performance under the terms and conditions of this Contract. DIR reserves the right to require a change in Manufacturer's then-current contract administrator if the assigned administrator is not, in the opinion of DIR, adequately serving the needs of the State.

6. Use of Resellers

Manufacturer shall provide service, sales and support resources to serve Customers at multiple geographic purchasing locations throughout the State of Texas. DIR agrees to permit Manufacturer to utilize designated Resellers so that sufficient resources are available to insure maximum service capability throughout the State. Such participation is subject to the following conditions:

A. Designation of Resellers

Manufacturer shall designate Resellers to participate under this Contract to act as the product/order distributors. DIR reserves the right to rescind any such Reseller participation or request that Manufacturer name additional Resellers should DIR determine it is in the best interest of the State.

Manufacturer shall have the right to qualify Resellers and their participation as fulfillment agents under this Contract by product line, contracting program (i.e., government/educational sales), geographic region, size/sales volume, technical training or other criteria, provided that: i) such criteria are uniformly applied to all potential Resellers based upon Manufacturer's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement; and ii) all general categories of criteria are fully covered by participating Resellers to meet the needs of Customers.

All Resellers who have been approved by the Manufacturer in accordance with the foregoing paragraph shall be eligible to quote lower pricing for procurements under this Contract which meet their qualifying criteria. Manufacturer warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means restrict any Reseller's participation or ability to quote a particular order; or prohibit Reseller from participating in other procurement opportunities offered through DIR.

B. Changes in Reseller List

Manufacturer may add and/or delete Resellers throughout the term of the contract provided the total number of Resellers does not exceed ten (10), but shall be no less than one (1). However, the participating Resellers must geographically provide adequate coverage to the entire State.

C. Conditions of Reseller Participation

All participating Resellers must be approved Catalog Information Systems Vendors with the State of Texas. At least one (1) of the participating Resellers must be Historically Underutilized Businesses as defined by the Texas Building and Procurement Commission.

D. Responsibility for Reseller Performance and Reporting

Manufacturer shall be fully liable for Resellers performance and compliance with all Contract terms and conditions herein. Manufacturer shall be responsible for reporting all products and services purchased through Resellers, in accordance with Section 12, Reporting and Administrative Fees.

E. Available Products and Services

Products and services ordered directly through Resellers shall be limited to products and services previously approved for inclusion under this Contract in Section 4, Product and Services Offerings, and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

F. Manufacturer Pricing to Reseller

Manufacturer is required to offer the same pricing to all participating Resellers for all products and services offered under this Contract.

G. Reseller Pricing to Customer

Pricing discount to the Customer shall not be less than what is specified in Appendix E. Reseller may offer higher discounts for larger volume purchases or special promotional offers.

7. Pricing

If Manufacturer offers and makes sales of products and services at a higher rate of discount, based on a quantity of one, from that specified in this Contract, to an eligible DIR Customer, other entity or consortia authorized by Texas law to sell Manufacturer's products and services to eligible DIR Customers, then the available discount levels in this Contract shall automatically be adjusted to that higher discount rate.

A. Customer Discount

Based on a quantity of one (1), the Customer discount from the Resellers for all products and services will be a percentage off Manufacturer's Suggested Retail Price, or Pricing Index as attached in Appendix E. Customer may negotiate more advantageous pricing for large volume purchases with a participating Reseller. The Customer Discount set forth herein shall adhere to Section 6 Paragraph G, Reseller Pricing to the Customer.

B. DIR Administrative fee

The DIR administrative fee specified in Section 12, Reporting and Administrative Fees, shall be included in the Customer Discount set forth herein. The administrative fee shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

C. Shipping and Handling Fees

The price to the Customer under this Contract shall include all shipping and handling fees, except for Magnitude Cabinets as specified in Appendix E, for Magnitude Cabinets Customer shall obtain the then current standard shipping charges. All shipments will be F.O.B. Customers destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

D. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 USC Secs. 4253(i) and (j).

E. Changes to Prices

Manufacturer may change the price of any product or service at any time, based upon changes to the Manufacturer's Suggested Retail Price, but discount levels shall remain consistent with the discount levels specified in Paragraph A, Customer Discount, of this Section. Price decreases shall take effect automatically during this Contract term and Manufacturer shall pass all price decreases on to the Customer.

Manufacturer may make product model changes and add new products or product upgrades at any time and the pricing for the same shall incorporate comparable price discount levels as specified in Section 7, Paragraph A, Customer Discount.

F. Travel Expense Reimbursements

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by state agency Customers shall not exceed the amounts authorized by the current State Travel Regulations. Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 12-C of this Contract is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

8. Order Processing and Payments

All Customer purchase orders will be placed directly with the participating Resellers. Accurate purchase orders shall be effective and binding upon acceptance by Reseller prior to the termination of this Contract period.

Invoices shall be submitted by the Reseller directly to the Customer and shall be issued by the Reseller in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under this Contract and any provision of acceptance of such products and/or services shall be made to the Reseller by the Customer.

Invoices must be timely and accurate. Each invoice must match Customer's order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's purchase order number or other pertinent information for verification of receipt of the order by the Customer.

Customer(s) shall comply with Chapter 2251, Texas Government Code, in making payments to Reseller. Payment under this contract shall not foreclose the right to recover wrongful payments.

9. Software Licensing Agreement

Customers purchasing software licenses under this Contract shall hold, use and operate such software subject to compliance with the End User License Agreement set forth in Appendix B hereto. No changes to the License Agreement Terms and Conditions may be made unless previously agreed to between Manufacturer and DIR. Customers may not add, delete or alter any of the language in Appendix C. Reseller shall make the End User License Agreement terms and conditions available to all Customers at all times.

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Compliance with the End User License Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the End User License Agreement. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the End User License Agreement terms and conditions.

10. Service Agreement

Customers purchasing services under this Contract shall be provided such services by Manufacturer as set forth in Appendix D, End User Support Plan Agreement. No changes to the End User Support Plan Agreement terms and conditions may be made unless previously agreed to by Manufacturer and DIR.

11. Internet Access to Contract and Pricing Information

Access by Customers to Contract terms and pricing information shall be made available and posted on the Internet. To that end, upon sixty (60) days from execution of the Contract, Manufacturer will be required to host the complete Contract product and service offerings, including pricing, at Manufacturer's Internet site. Internet access to this information will be provided including all subsequent changes to the product and services offerings and pricing during the term of this Contract at no cost to DIR, the State, and Customers.

A. Accurate and Timely Contract Information

Manufacturer warrants and represents that Contract and related information will be accurately and completely posted, maintained and displayed in an objective and timely manner which renders it clearly distinguishable from other, non-Contract offerings at Manufacturer's web site. Manufacturer shall indemnify DIR, the State, and Customers for damages resulting from errors or inaccuracies in such information, or from any failure to maintain or timely post Contract information in accordance with this paragraph.

B. Price Data Retention and Compliance Checks

Periodic Compliance Checks of the information posted for this Contract on Manufacturer's web site will be conducted by DIR. Upon request by DIR, Manufacturer shall provide verifiable documentation that pricing listed upon this site is uniform with the Customer Discount as stated in Section 7A.

C. Web Site Changes

Manufacturer hereby consents to a link from the DIR web site to Manufacturer's web site in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Manufacturer with subsequent notice of link termination or removal. Manufacturer shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

D. Use of Access Data Prohibited

If Manufacturer stores, collects or maintains data electronically as a condition of accessing State Contract information, such data shall only be used internally by Manufacturer for the purpose of implementing or marketing the State Contract, and shall not be disseminated to third parties or used for other marketing purposes. This Contract constitutes a public document under the laws of the State and Manufacturer shall not restrict access to the Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.



E. Responsibility for Content

Manufacturer is solely responsible for administration, content, intellectual property rights, and all materials at Manufacturer's web site. Manufacturer is solely responsible for its actions and those of its agents, employees, Resellers, or subcontractors, and agrees that neither Manufacturer nor any of the foregoing has any authority to act or speak on behalf of DIR or the State. DIR requires Manufacturer to list all participating Reseller's information on the web site, such as: company name, address, contact information, phone and fax number, email address, State Vendor ID number, and other applicable information as deemed necessary by DIR. DIR also reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent this Contract.

F. On-line Price Configurator

Manufacturer may be required to make available an on-line configurator at its Contract web site. Directions and assistance in using the configurator and web site in general must be available at entry. This configurator must enable Customers to: (i) view the options available for the type of product or service requested, (ii) search and find products or services offered under this Contract, (iii) calculate complete acquisition costs. Information consistent with the terms of this Contract about payment, shipping, returns, delivery terms and special pricing shall be available. Customers shall have the option of printing their "shopping cart" choices. For those users who are positioned to use it, Manufacturer shall make available an option for on-line secure ordering.

12. Reporting and Administrative Fees

Manufacturer shall be responsible for reporting all products and services purchased through Resellers under this Contract. The failure to file the monthly reports, subcontract reports, and pay the administrative fees on a timely basis will constitute grounds for suspension or termination of the contract for cause. If Manufacturer submits three (3) consecutive monthly reports incorrectly, DIR reserves the right to suspend or terminate this contract for cause. Manufacturer's liability for any breach of this section is limited to the amount of administrative fees owed to DIR by Manufacturer.

DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Manufacturer's applicable Contract books.

A. Detailed Monthly Report

Manufacturer shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under this Contract for the previous month period. Reports shall be submitted to the DIR Go DIRECT Coordinator. Reports are due on the fifteenth (15th) day after the close of the previous month period. It is the responsibility of Manufacturer to collect and compile all sales under this Contract from participating Resellers and submit one (1) monthly report. The monthly report shall include the participating individual Reseller's sales for the period, the Reseller's company name, each Customer name, order date, ship date, description, part numbers, manufacturer, quantity, unit price, extended price, Customer purchase order number, contact name, Customer's complete billing address, and other information as required by DIR. Each line item sale must contain all information listed above or the report will be rejected and returned to the Manufacturer for correction.

B. Historically Underutilized Business Subcontract Reports

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Manufacturer shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to this Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.

Reports shall be due quarterly in compliance with the following schedule, or as requested by each ordering Customer:

September – November: due by December 5th

December – February: due by March 5th

March – May: due June 5th

June – August: due September 5th

C. DIR Administrative Fee

An administrative fee shall be paid by Manufacturer to DIR to defray the DIR costs of negotiating, executing, and administering this Contract. All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Manufacturer. Any change in the administrative fee shall be incorporated in the price to the Customer.

Manufacturer will pay DIR, on the fifteenth (15th) day after the close of the previous month period, a two percent (2%) administrative fee based on the dollar value of all sales to Customers pursuant to this Contract. Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$2,000.

13. Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given on i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. The parties may from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party.

If sent to the State:

Patrick W. Hogan
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Fax: (512) 475-4759
(Email: patrick.hogan@dir.state.tx.us)

If sent to the Manufacturer:

Mary Reuss, Manager of Government Operations
XIOtech
6455 Flying Cloud Drive
Eden Prairie, MN 55344-3305
Phone: 952-983-2433
Fax: 952-983-2527
Email: mary_reuss@xiotech.com

14. Captions

The captions contained in this Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.


15. Choice of Law

The law of the State of Texas shall govern the construction and interpretation of this Contract. Nothing herein shall be construed to waive the state's sovereign immunity.

IN WITNESS WHEREOF, the parties therefore hereby execute their mutual agreement to the terms of this Contract. This agreement shall be executed and shall be a binding Contract between the parties.

XIOtech Corporation

The State of Texas, acting by and through the
Department of Information Resources

Authorized By: 

Authorized By: Patrick W. Hogan

Name: STEVEN E. SNYDER

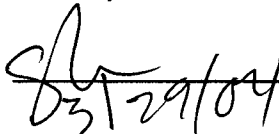
Name: Patrick W. Hogan

Title: CEO

Title: Director of Business Operations

Date: 3-30-04

Date: 3/29/04

Legal:  3/29/04

APPENDIX A

STANDARD CLAUSES

STATE OF TEXAS, DIR CONTRACTS

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STANDARD CLAUSES FOR TEXAS DIR CONTRACTS

The parties to the attached Contract, amendment or other agreement of any kind (hereinafter, "this Contract") agree to be bound by the following clauses which are hereby made a part of this Contract. Manufacturer shall be fully liable for Resellers performance and compliance with the clauses herein.

1. INDEMNIFICATION CLAUSE. Manufacturer shall defend, indemnify and hold harmless the State of Texas, its officers, agents, and employees from and against all claims, actions, suits, demands, proceeding, costs, damages and liabilities, including attorneys fees, arising out of, the death, personal injury or damage to tangible property only to the extent that such damages were the result of the Manufacturer or its agents, employees, subcontractors, gross negligence or willful misconduct under this Contract and any Purchase Order(s) issued under this Contract.

The Manufacturer shall defend, indemnify and hold harmless the State of Texas, its officers, agents and employees, from any and all claims involving infringement of any valid United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the use of any product or service supplied by the Manufacturer. Manufacturer agrees to defend against any and all such claims at Manufacturer's expense, whether or not such claims become the subject of litigation. DIR will provide Manufacturer sole control over any such defense and agrees to reasonably assist in the defense of such claims if so requested by the Manufacturer. Manufacturer agrees to coordinate defense with the Texas Office of Attorney General, as may be requested by DIR subject to the laws of the state.

1.1 Notwithstanding Section 1 above, Manufacturer assumes no liability for any claim, suit or proceedings for infringement arising or alleged to arise from use of a Product or Software as part of any completed equipment or method or process. Manufacturer assumes no liability for any claim, suit or proceeding arising or alleged to arise from: (i) any marking or branding applied to a Product or Software by a party other than Manufacturer, (ii) any marking or branding applied to a Product or Software by Manufacturer at the request of Customer; (iii) modification or servicing of all or part of a Product by any party other than Manufacturer (except as expressly authorized by manufacturer in writing); (iv) modification of Software by any party other than Manufacturer; or (v) modification of all or part of a Product or Software by manufacturer at Customer's request. This Section states the entire liability and obligations of manufacturer, for infringement and the exclusive remedy of Customer.

2. NON-ASSIGNMENT CLAUSE. This Contract shall be entered into and be binding upon the successors of the parties. Manufacturer may not assign this Contract without the prior written consent of DIR. Any attempt to assign this Contract without the written consent of DIR is null and void.

3. NO QUANTITY GUARANTEES. This Contract is not exclusive to the named Manufacturer. Customers may obtain Information Resources Technologies from other sources during the Contract term. DIR makes no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Information Resources Technologies will be procured through the Contract.

4. CONFIDENTIALITY CLAUSE. Manufacturer acknowledges that DIR is a government agency subject to the Texas Public Information Act. Manufacturer also acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

Under the terms of this Contract, DIR may provide Manufacturer with information related to Customers. Manufacturer shall not re-sell or otherwise distribute or release to any party in any manner, Customer information. Subject to the Texas Public Information Act, DIR agrees to protect Manufacturer's information that has been designated by Manufacturer as confidential.

5. MANUFACTURER CERTIFICATIONS. Manufacturer certifies (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract; (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledges this Contract may be terminated and payment withheld if this certification is inaccurate; (iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) it has not received payment from DIR or any of its employees for participating in the preparation of this Contract; (v) it is not ineligible to receive this Contract under § 2155.004, Texas Government Code; (vi) it is in compliance with §618.003, Texas Government Code; (vii) it will comply with §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of this Contract; and (viii) to the best of the Manufacturer's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting the Manufacturer, which if determined adversely to the Manufacturer will have a material adverse effect on the ability of the Manufacturer to fulfill its obligations under this Contract.

6. EQUAL OPPORTUNITY COMPLIANCE. Manufacturer agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Manufacturer agrees that no person in the United States shall, on the grounds of race, color,

religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Manufacturer under this Contract. If Manufacturer is found to be not in compliance with these requirements during the term of this Contract, Manufacturer agrees to take appropriate steps to correct these deficiencies. Upon request, Manufacturer will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

7. TECHNOLOGY ACCESS CLAUSE, AS REQUIRED BY §2157.005, TEXAS GOVERNMENT CODE. (Applicable to State Agency Purchases Only)

Manufacturer expressly acknowledges and agrees that State funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Manufacturer represents and warrants to DIR and each Customer purchasing products under this Contract that the technology provided hereunder is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology of: (i) providing equivalent access for effective use by both visual and non-visual means; (ii) presenting information, including prompts used for interactive communications, in formats intended for both visual and non-visual use; and (iii) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For the purposes of this section, the phrase "equivalent access means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples, of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical display and customizable display appearance.

8. COMMODITY SOFTWARE. Texas Government Code, §2157.068 requires State agencies to buy commodity software in accordance with contracts developed by DIR, unless the agency obtains a waiver from DIR. Manufacturer shall agree to coordinate all agency commodity software sales made pursuant to this Contract through existing DIR contracts, if available. Manufacturer represents it will not license through a signed or unsigned license agreement, volume licensing agreement or an order confirmation, the commodity software to state agencies unless the agency is able to provide a DIR granted waiver that the agency is able to purchase the commodity software outside the DIR Commodity Software contracts. The

operating system software and institutions of higher education are not bound to this Code.

9. RECORDS AND AUDIT. The Manufacturer shall maintain adequate records to establish compliance with this Contract until the later of a period of four years after termination of this Contract or until full, final and unappealable resolution of all compliance checks or litigation issues that arise under this Contract. Such records shall include identification of the procuring Customer, documentation of the Customer's ordering date, Customer Purchase Order number, order date of product or service, ship date or service delivery date, full invoice address, name of participating Reseller for the procurement, unit price, extended price, participating Reseller invoice number, record of procuring Customer payment and/or balance due, the calculations supporting each administrative fee owed DIR under this Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

Manufacturer shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of this Contract to DIR, the auditors designated by DIR, including auditors of the State Auditor's Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, auditing and/or copying such books and records. Copies and printouts requested by DIR shall be provided by Manufacturer without charge. DIR shall provide Manufacturer ten (10) business days' notice prior to inspecting, auditing, and/or copying Manufacturer's records. Manufacturer's records, whether paper or electronic, shall be made available during regular office hours. Manufacturer personnel familiar with the Manufacturer's books and records shall be available to DIR staff and designees as needed. Manufacturer shall provide adequate office space to DIR staff during the performance of a compliance check.

If any inspection or compliance check performed hereunder reveals an aggregate overcharge to a Customer of .5% or greater, or an aggregate underpayment to DIR of its administrative fee of .5% or greater, then the cost of such compliance check or inspection, including, but not limited to, the salary and associated overhead of DIR staff performing the compliance check or inspection, shall be reimbursed to DIR within thirty (30) days from receipt of an invoice from DIR reflecting the cost of the compliance check or inspection.

For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Manufacturer through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Manufacturer can demonstrate to DIR's satisfaction that Manufacturer's calculation of DIR's administrative fee is correct.

Manufacturer understands that acceptance of funds under this Contract acts as acceptance of the authority of the State

Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Manufacturer further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Manufacturer will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Manufacturer and the requirement to cooperate is included in any subcontract it awards pertaining to this Contract.

10. ABILITY TO CONDUCT BUSINESS IN TEXAS.

The Manufacturer is an entity authorized and validly existing under the laws of its state of organization, and is authorized to do business in the State of Texas. The Manufacturer is a "Catalog Information Systems Vendor" as defined by the Texas Building and Procurement Commission. All products and services offered to Customers under this Contract are listed in Manufacturer's catalog on file with the Texas Building and Procurement Commission.

11. QUOTATIONS, WARRANTY, AND RETURN POLICIES.

Manufacturer will adhere to Manufacturer's then-currently published policies concerning quotations, warranties, and return policies. Warranty and return policies for Customers will not be more restrictive or more costly than those warranty and return policies maintained by Manufacturer for other similarly situated Customers for like products or services.

12. INVALID TERM OR CONDITION. If any term or condition of this Contract shall be held invalid or unenforceable, the remainder of this Contract shall not be affected and shall be valid and enforceable.

13. ENFORCEMENT OF CONTRACT AND DISPUTE RESOLUTION.

Manufacturer and DIR agree to the following (i) a party's failure to require strict performance of any provision of this Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision; (ii) applicable to State agency purchases only, for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used; (iii) the laws of the State of Texas shall govern this Contract; (iv) actions or proceedings arising from this Contract shall be heard in a court of competent jurisdiction in Travis County, Texas; and (v) nothing herein shall be construed to waive the State's sovereign immunity.

14. ENTIRETIES. The Contract supercedes all prior agreements, representations or promises, whether oral or written, made by the parties regarding the subject matter of this Contract.

15. MODIFICATION OF CONTRACT TERMS AND/OR AMENDMENTS.

The terms and conditions set forth in the Contract shall govern all transactions by Customers under this Contract. The Contract may only be modified or amended upon mutual agreement of DIR and

Manufacturer. For individual Purchase Orders, however, the Manufacturer may offer Customers more advantageous pricing and/or payment options than those set forth in the Contract. In such event, Manufacturer shall furnish a copy of such better offerings to DIR upon request.

16. DIR LOGO. Manufacturer and its Resellers may use the DIR logo in the promotion of this Contract to Customers with the following stipulations; (i) the logo may not be modified in any way; (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Manufacturer or Reseller logo; (iii) the DIR logo is only used to communicate the availability of products and services under this Contract to Customers; and (iv) any other use of the DIR logo requires prior written permission from DIR.

17. MANUFACTURER LOGO. DIR may use the Manufacturer's name and logo in the promotion of this Contract to communicate the availability of Products under this Contract to Customers. Use of the logo may be on the DIR Web Site or on printed materials. Any use of Manufacturer's Logo by DIR must comply with and be solely related to the purposes of this Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in this Contract will give DIR any right, title, or interest in or to Manufacturer's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Manufacturer.

18. LEASING PROVISION. DIR and Manufacturer may agree to provisions that allow leasing of the products offered under the Contract, under terms and conditions which will become incorporated in the Contract.

19. SITE PREPARATION. Customer(s) shall prepare and maintain its site in accordance with written instructions furnished by Manufacturer and/or Reseller(s) prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

20. TRADE SHOW PARTICIPATION. Manufacturer understands and agrees that it must participate by providing a staffed booth display or similar presence at no less than two (2) trade shows or similar functions sponsored by DIR Business Operations Division each calendar year at the Manufacturer's expense. Participating Resellers may also be required to provide a staffed booth display or similar presence at no less than two (2) trade shows or similar functions sponsored by DIR Business Operations Division each calendar year at the Reseller's expense. Manufacturer and all participating Resellers must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location of the use of the DIR logo in or on the Manufacturer's booth.

21. ORIENTATION MEETING. Upon 60 days from execution of the Contract, DIR may require the Manufacturer and all participating Resellers to attend an orientation meeting to discuss the Contract content and procedures. The meeting will be held within the Austin,

Texas area at a date and time mutually acceptable to DIR and the Manufacturer. DIR shall bear no cost in the time and travel of the Manufacturer or participating Resellers for attendance at the meeting.

22. USE OF SUBCONTRACTORS. Manufacturer may subcontract installation, training, warranty, or maintenance services. However, Manufacturer shall remain solely responsible for the performance of its obligations under this Contract. If Manufacturer uses any subcontractors, Manufacturer shall satisfy DIR that it has complied and maintains compliance with the DIR HUB Subcontracting Plan.

23. FORCE MAJEURE. DIR, Customer, or Manufacturer may be excused from performance under this contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties immediately. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Manufacturer will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

24. TERMINATION FOR NON-APPROPRIATION. Customer may terminate Purchase Orders and DIR may terminate this Contract if funds sufficient to pay obligations hereunder are not appropriated by the legislative body on behalf of local governments, or by the Texas legislature on behalf of state agencies. In the event of non-appropriation, Manufacturer will be provided ten (10) days written notice of intent to terminate. Customer agrees to either pay for product and services delivered and rendered respectively or to return said Product.

25. TERMINATION FOR CONVENIENCE. Either party may terminate this Contract, in whole or in part, by giving the other party thirty (30) days written notice. A Customer may terminate a Purchase Order if it is determined by the Customer that Manufacturer will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

26. TERMINATION FOR CAUSE. Either DIR or Manufacturer may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of this Contract or a Purchase Order arising hereunder. The non-defaulting party shall give the defaulting party thirty (30) days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate this Contract. Customers hereunder have no

power to terminate this Contract for default. Customer's rights are exclusively based on their Purchase Order.

27. CUSTOMER RIGHTS UNDER TERMINATION. In the event this Contract expires or is terminated for any reason, a Customer shall retain its rights under the Purchase Order issued with respect to all products or services ordered and accepted prior to the effective termination date.

28. MANUFACTURER AND/OR RESELLER RIGHTS UNDER TERMINATION. In the event this Contract expires or is terminated for any reason, a Customer shall pay all amounts due for products or services ordered prior to the effective termination date and ultimately accepted.

29. SURVIVAL. All warranty and/or service agreements that were entered into between Manufacturer and a Customer under the terms and conditions of this Contract shall survive the termination of this Contract.

30. HANDLING OF WRITTEN COMPLAINTS. In addition to other remedies contained in this Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office
Department of Information Resources
Attn: Public Information Officer
300 W. 15th Street, Suite 1300
Austin, TX 78701
(512) 475-4700, voice
(512) 475-4759, fax

31. LIMITATION OF LIABILITY
MANUFACTURER'S TOTAL (AGGREGATE LIABILITY NOT WITHSTANDING SECTION 1 ABOVE) ARISING IN ANY WAY OUT OF THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER FOR PRODUCTS. IN NO EVENT SHALL MANUFACTURER BE LIABLE FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS. IN NO EVENT SHALL MANUFACTURER BE LIABLE TO ANY PERSON OR ENTITY, INCLUDING BUT NOT LIMITED TO CUSTOMER, FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR INDIRECT DAMAGES, HOWEVER CAUSED, OR ALLEGED TO HAVE BEEN CAUSED, ON ANY THEORY OF LIABILITY.

Updated 8/30/04

**Department of Information Resources
XIOtech Products and Services
Invitation to Negotiate DIR-BUSOP-TMP-010**

**Historically Underutilized Businesses
Subcontracting Plan (Form 1)**

This form is required as part of the Historically Underutilized Businesses (HUB) Subcontracting Plan. Failure to include this form and the applicable forms specified herein will result in automatic disqualification of your response to the offering document.

Vendor Company Name: Xiotech Corporation

Vendor Identification Number: 1-41-182-1093-000

1. The Department of Information Resources has determined that HUB subcontracting opportunities are probable. Is your company proposing to subcontract any portion of the contract?

☒ Yes – Complete the following forms:
Determination of Good Faith Effort (Form 2)
Solicitation of HUB Subcontractors (Form 3)
Selected Subcontractors (Form 4)

What percentage of the proposed work is to be performed by your company? ____

☐ No – Complete the Statement of Intent (Form 5)

2. Is your company certified as a HUB by the State of Texas?

☐ Yes ☒ No

I have read and understand the Department of Information Resources' Policy on Utilization of HUBs.

Steven E. Snyder
Authorized Representative Name

CFO
Authorized Representative Title

[Signature]
Authorized Representative Signature

8/30/04
Date

DB

**Department of Information Resources
XIOtech Products and Services
Invitation to Negotiate DIR-BUSOP-TMP-010**

**HUB Subcontracting Plan
Determination of Good Faith Effort (Form 2)**

Vendor Company Name: Xiotech Corporation
Vendor Identification Number: 1-41-182-1093-000

The potential vendor must make a good faith effort in development of the HUB Subcontracting Plan. Please provide answers to the questions below and provide necessary documentation to support the answers. The Department of Information Resources may review the supporting documentation to determine if a good faith effort was made in accordance with applicable 1 TAC rules and the contract specifications. If it is determined that a good faith effort was not made, the vendor response to the offering document shall be rejected as a material failure to comply with advertised specifications. The reasons for rejection shall be recorded in the project file.

1. Did your company divide the contract work into reasonable portions in accordance with prudent industry practices? () Yes (X) No
2. Did your company send notices containing adequate information about bonding, insurance, the plans, the specifications, scope of work, and other requirements of the contract to three or more qualified HUBs allowing five working days from receipt of notice for HUBs to participate effectively? () Yes (X) No
3. Did your company advertise the subcontracting opportunities in general circulation, trade association, and/or other minority/women focused media? () Yes (X) No
4. Did your company assist non-certified HUBs to become certified? () Yes (X) No
5. Did your company negotiate in good faith with qualified HUBs, not rejecting qualified HUBs who were the best value responsive bidder? () Yes (X) No
6. Did your company document reasons for rejection or meet with rejected HUBs to discuss the rejection? () Yes (X) No

Notes Xiotech Corporation has a formal Channel Partner program in place. We are adding all of our partners located in Texas to our DIR Contract as authorized resellers. Three of the seven are HUBs. We cannot subcontract work to non-Xiotech partners.

TO

Department of Information Resources
XIOtech Products and Services
Invitation to Negotiate DIR-BUSOP-TMP-010

HUB Subcontracting Plan
Solicitation of HUB Subcontractors (Form 3)

Page 1 of 2

Use a separate form for each subcontract solicited. Identify each HUB to which a notice of solicitation was given. Use continuation pages if necessary.

Vendor Company Name: Xiotech Corporation

Vendor Identification Number: 1-41-182-1093-000

Brief Description of Work to be Performed: Sell products listed on
Xiotech's DIR Contract

Vendor's Estimate of Dollar Value of Subcontract: Approx. \$2.0 - \$3.0 Million per year
(all resellers)

1. Name of HUB Subcontractor/Supplier: Cypress Technologies

Address: 17301 FM 1431, Leander, TX 78641

Phone: 800-444-1309 Owner(s): Jequie Child

If TBPC HUB certified, provide Vendor Identification Number: 1-02-869-7901-400
If not TBPC HUB certified, select one of the following:

☐ Black American Male ☐ Hispanic American Male ☐ Native American Male
☐ Black American Female ☐ Hispanic American Female ☐ Native American Female
☐ Asian Pacific American Male ☒ Woman
☐ Asian Pacific American Female

2. Name of HUB Subcontractor/Supplier: M2 Technology Inc.

Address: 21702 Hardy Oak, Suite 100, San Antonio TX 78258

Phone: 210-566-3773 Owner(s): Mark Martinez

If TBPC HUB certified, provide Vendor Identification Number: 1-74-296-1396-500
If not TBPC HUB certified, select one of the following:

☐ Black American Male ☒ Hispanic American Male ☐ Native American Male
☐ Black American Female ☐ Hispanic American Female ☐ Native American Female
☐ Asian Pacific American Male ☐ Woman
☐ Asian Pacific American Female

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**Department of Information Resources
XIOtech Products and Services
Invitation to Negotiate DIR-BUSOP-TMP-010**

**HUB Subcontracting Plan
Solicitation of HUB Subcontractors (Form 3)
Continuation Page**

Page 2 of 2

3. Name of HUB Subcontractor/Supplier: Micro System Enterprises, Inc.

Address: 10661 Rockley Rd., Houston, TX 77099

Phone: 281-983-9955 Owner(s): Frankie Wong

If TBPC HUB certified, provide Vendor Identification Number: 1-76-028-5647-200
If not TBPC HUB certified, select one of the following:

<input type="checkbox"/> Black American Male	<input type="checkbox"/> Hispanic American Male	<input type="checkbox"/> Native American Male
<input type="checkbox"/> Black American Female	<input type="checkbox"/> Hispanic American Female	<input type="checkbox"/> Native American Female
<input checked="" type="checkbox"/> Asian Pacific American Male	<input type="checkbox"/> Woman	
<input type="checkbox"/> Asian Pacific American Female		

4. Name of HUB Subcontractor/Supplier: _____

Address: _____

Phone: _____ Owner(s): _____

If TBPC HUB certified, provide Vendor Identification Number: _____
If not TBPC HUB certified, select one of the following:

<input type="checkbox"/> Black American Male	<input type="checkbox"/> Hispanic American Male	<input type="checkbox"/> Native American Male
<input type="checkbox"/> Black American Female	<input type="checkbox"/> Hispanic American Female	<input type="checkbox"/> Native American Female
<input type="checkbox"/> Asian Pacific American Male	<input type="checkbox"/> Woman	
<input type="checkbox"/> Asian Pacific American Female		

5. Name of HUB Subcontractor/Supplier: _____

Address: _____

Phone: _____ Owner(s): _____

If TBPC HUB certified, provide Vendor Identification Number: _____
If not TBPC HUB certified, select one of the following:

<input type="checkbox"/> Black American Male	<input type="checkbox"/> Hispanic American Male	<input type="checkbox"/> Native American Male
<input type="checkbox"/> Black American Female	<input type="checkbox"/> Hispanic American Female	<input type="checkbox"/> Native American Female
<input type="checkbox"/> Asian Pacific American Male	<input type="checkbox"/> Woman	
<input type="checkbox"/> Asian Pacific American Female		



Department of Information Resources
XIOtech Products and Services
Invitation to Negotiate DIR-BUSOP-TMP-010

HUB Subcontracting Plan
Selected Subcontractors (Form 4)

Please submit a separate form for each subcontractor selected for work on the proposed contract.

Vendor Company Name: Xiotech Corporation

Vendor Identification Number: 1-41-182-1093-000

Vendor's Estimate of Dollar Value of Subcontract: Approx. \$2.0 to \$3.0 Million per year
(all resellers)

Vendor's Estimate of Percentage of the Dollar Value of the Proposed Contract: 5%

Vendor's Estimate of Percentage of the Proposed Work: 5%

Duration of Subcontract: Ongoing for the duration of our contract

Name of Subcontractor/Supplier: Cypress Technologies

Address: 17301 Fm 1431, Leander, TX 78641

Phone: 800-444-1309 Owner(s): Jacquie Child

Is the subcontractor a TBPC certified HUB? ☒ Yes () No

If yes, provide Vendor Identification Number: 1-02-069-7901-400

Description of materials/services to be performed under the agreement with the subcontractor for amount indicated above:

Sell products listed on Xiotech's DIR Contract.



Department of Information Resources
XIOtech Products and Services
Invitation to Negotiate DIR-BUSOP-TMP-010

HUB Subcontracting Plan
Selected Subcontractors (Form 4)

Please submit a separate form for each subcontractor selected for work on the proposed contract.

Vendor Company Name: Xiotech Corporation

Vendor Identification Number: 1-41-182-1093-000

Vendor's Estimate of Dollar Value of Subcontract: Approximately \$2.0 to \$3.00 Million per year
(all resellers)

Vendor's Estimate of Percentage of the Dollar Value of the Proposed Contract: 5%

Vendor's Estimate of Percentage of the Proposed Work: 5%

Duration of Subcontract: Ongoing for the duration of our contract

Name of Subcontractor/Supplier: M2 Technology Inc.

Address: 21702 Hardy Oak, Suite 100, San Antonio TX 78258

Phone: 210-566-3773 Owner(s): Mark Martinez

Is the subcontractor a TBPC certified HUB? ☒ Yes ☐ No

If yes, provide Vendor Identification Number: 1-74-296-1396-500

Description of materials/services to be performed under the agreement with the subcontractor for amount indicated above:

Sell products listed on Xiotech's DIR Contract.

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Department of Information Resources
XIOtech Products and Services
Invitation to Negotiate DIR-BUSOP-TMP-010

HUB Subcontracting Plan
Selected Subcontractors (Form 4)

Please submit a separate form for each subcontractor selected for work on the proposed contract.

Vendor Company Name: Xiotech Corporation

Vendor Identification Number: 1-41-182-1093-000

Vendor's Estimate of Dollar Value of Subcontract: Approximately \$2.0 to \$3.0 Million
(all resellers) per year

Vendor's Estimate of Percentage of the Dollar Value of the Proposed Contract: 15%

Vendor's Estimate of Percentage of the Proposed Work: 15%

Duration of Subcontract: Ongoing for the duration of our contract

Name of Subcontractor/Supplier: Micro Systems Enterprises Inc.

Address: 10661 Rockley Rd. Houston TX 77099

Phone: 281-983-9955 Owner(s): Frankie Wong

Is the subcontractor a TBPC certified HUB? ☒ Yes () No

If yes, provide Vendor Identification Number: 1-76-028-5647-200

Description of materials/services to be performed under the agreement with the subcontractor for amount indicated above:

Sell products listed on Xiotech's DIR Contract

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**Department of Information Resources
XIOtech Products and Services
Invitation to Negotiate DIR-BUSOP-TMP-010**

**Historically Underutilized Businesses
Subcontracting Plan (Form 1)**

This form is required as part of the Historically Underutilized Businesses (HUB) Subcontracting Plan. Failure to include this form and the applicable forms specified herein will result in automatic disqualification of your response to the offering document.

Vendor Company Name: XIOtech Corporation
Vendor Identification Number: 1-41-182-1093-000

1. The Department of Information Resources has determined that HUB subcontracting opportunities are probable. Is your company proposing to subcontract any portion of the contract?

☐ Yes – Complete the following forms:
Determination of Good Faith Effort (Form 2)
Solicitation of HUB Subcontractors (Form 3)
Selected Subcontractors (Form 4)

What percentage of the proposed work is to be performed by your company? ____

☒ No – Complete the Statement of Intent (Form 5)
Please see attached explanation.


2. Is your company certified as a HUB by the State of Texas?

☐ Yes ☒ No

I have read and understand the Department of Information Resources' Policy on Utilization of HUBs.

Steven E. Snyder
Authorized Representative Name

Chief Financial Officer
Authorized Representative Title


Authorized Representative Signature

2-19-04
Date

**Department of Information Resources
XIOtech Products and Services
Invitation to Negotiate DIR-BUSOP-TMP-010**

**HUB Subcontracting Plan
Statement of Intent (Form 5)**

Vendor Company Name: XIOtech Corporation (VENDOR)

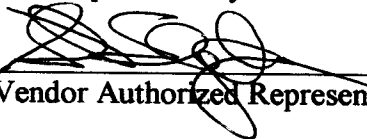
If Vendor is **not** proposing to subcontract any portion of the contract, the potential vendor HUB Subcontracting Plan will be considered responsive, qualified and/or valid by completing the following Statement of Intent.

Statement of Intent:

I Steven E. Snyder, an authorized representative of
VENDOR have reviewed
(Vendor Authorized Representative)

the offering document and have determined that the entire work of the contract will be completed with VENDOR's own employees and resources without subcontracting any portion of the contract.

If, after award of the contract, circumstances necessitate the use of any subcontractors, the Department of Information Resources will be notified in writing. VENDOR will comply with the provisions of 1 TAC §111.14(b) relating to developing and submitting a subcontracting plan before any modifications to the HSP can be considered by the Department of Information Resources. If VENDOR subcontracts any of the work under the awarded contract without prior Department of Information Resources authorization and compliance of 1 TAC §111.14(b), VENDOR may be considered in breach of the awarded contract and subject to any remedial actions provided by state law and HUB rules, possibly including termination of the contract.


Vendor Authorized Representative Signature

2-18-04
Date

XIOtech Corporation End User License Agreement

NOTICE TO USER: This is a legal agreement between you, the end user ("You"), and XIOtech Corporation (including its affiliates) ("XIOtech") for XIOtech software ("XIOtech Software") and/or third-party software ("Third-Party Software") (hereinafter referred collectively as "Software Product"), including Related Documentation provided therewith. By reviewing, installing and/or using the product and/or Related Documentation enclosing this document, You agree to be bound by all of the terms and conditions of this End-User License Agreement ("EULA"). If You do not agree to all of the terms of this EULA, XIOtech is unwilling to license the Software Product to you. In such event, You may not use or copy the Software Product, and You should promptly return this document along with the Software Product, product packaging and any other accompanying items to XIOtech or the location where You obtained them in accordance with the applicable return policy.

XIOtech grants to You a nonexclusive, nontransferable, nonsublicensable, limited license to use, without modification, the Software Product and Related Documentation, provided that You agree to the following:

- 1. Software.** You agree to use the Software Product only on the specified XIOtech product (identified by the XIOtech system serial number as provided on the certification card enclosed with such Software/XIOtech product(s) ("Specified XIOtech Product")). You are permitted to make one copy of the Software Product to maintain as a replacement copy in the event that the original copy fails or becomes unusable. In the event the Software Product fails or becomes unusable, You shall promptly return the failed or unusable Software Product to XIOtech for replacement.
- 2. Related Documentation.** You agree to use the operating manuals, charts, tables, written descriptions and handbooks in any medium related to the Software Product ("Related Documentation") only on the Specified XIOtech Product. You are not permitted to make additional copies of the Related Documentation without the express written consent of XIOtech. In the event the Related Documentation is lost or destroyed, upon Your request, XIOtech will provide a replacement copy of the Related Documentation for a reasonable fee.
- 3. License Fee.** You agree to pay the license fee for the Software Product as set forth in documentation between You and XIOtech related to the purchase of the Specified XIOtech Product, within the terms of such documentation.
- 4. Term and Termination.** Subject to termination for breach as set forth in the following sentence, the term of the license created by this EULA shall extend for as long as You own the Specified XIOtech Product; and, upon termination of Your ownership of the Specified XIOtech Product, Your license to use the Software Product and Related Documentation shall automatically be terminated. Without prejudice to any other rights, XIOtech may terminate this EULA and your license and rights to the Software Products and Related Documentation with no prior notice if You fail to comply with the terms and conditions as stated herein. Upon termination of this EULA for any reason, You shall immediately destroy or return all originals and all copies of the Software Product, Related Documentation, and all of its component parts as directed by XIOtech. These terms and conditions take precedence over any terms and conditions of any other agreement between XIOtech and You regarding the Software Product. The provisions contained in this EULA that protect the interests of XIOtech in the Software Product and/or Related Documentation shall survive the termination of this EULA.
- 5. Ownership.** All title and copyrights as well as trade secret, patent and other proprietary rights in and to the Software Product (including but not limited to any images, photographs, animations, video, audio, music, test, and "applets" incorporated into the Software Product), the Related Documentation, and any copies of the Software Product and/or Related Materials, are owned by XIOtech or its suppliers regardless of the form or media in or on which the original and other copies may exist. This license is not a sale or assignment of the original Software Product, Related Documentation or any copy thereof.
- 6. Copyright.** United States copyright laws and international treaty provisions protect the Software Product and the Related Documentation. Unauthorized use or copying of the Software Product, including Software Product that has been modified, merged, or included with other software,

or of the Related Documentation is expressly forbidden. Any copies that You are permitted to make pursuant to this EULA must contain the same copyright and other proprietary notices that appear on or in the Software Product and Related Documentation. The Software Product, Related Documentation and/or Specified XIOtech Product contain trade secret information of XIOtech. You agree to keep such trade secret information confidential and not to use or disclose any of it except as needed to use the Specified XIOtech Product. You also agree not to modify, prepare derivative works, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software Product or any Related Documentation, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

7. Transfer. Under no circumstances may You distribute, transfer, rent, sell, offer to sell, lend, lease, sublease, assign, in whole or in part, any of Your rights and/or obligations under this EULA and/or any portion of the Software Product or Related Documentation to a third party, whether by assignment, merger, transfer of assets, sale of stock, operation of law or otherwise, and any attempt to do so shall be deemed void.

8. Confidentiality. You shall maintain the confidentiality of the Software Product and Related Documentation, by taking those precautions in protecting the Software Product and Related Documentation You employ to protect Your own confidential information but no less than a reasonable amount of care. You shall insure that the Software Product and the Related Documentation associated with the Software Product are not made available by You or by any of Your employees, agents, clients or customers to any other person, firm or corporation. You shall notify XIOtech promptly, in writing, of the circumstances of any event of unauthorized possession, use or knowledge of the Software Product or Related Documentation from You. You agree that any unauthorized distribution, transfer, sale, offer for sale, reproduction, or use of the Software Product or the Related Documentation will cause irreparably harm to XIOtech. You shall inform Your employees having access to the Software Product and/or Related Documentation of the limitations and obligations of You regarding non-disclosure and copying of the Software Product and Related Documentation. This section shall survive termination of this Agreement.

9. Upgrades. You agree that any and all upgrades, modifications, patches and the like supplied to the Software Product shall be used only in accordance with this EULA, and that the terms and conditions of this EULA shall apply to such upgrade(s), modifications, patches, etc., to the same extent as they apply to the Software Product.

10. Warranty. XIOtech warrants to You that the XIOtech Software will perform substantially in accordance with the Related Documentation for a period of ninety (90) calendar days from the date of shipment from XIOtech ("Limited Warranty").

11. Limitation of Warranty. A. XIOtech does not warrant that the operation of XIOtech Software or the media on which it is contained will be uninterrupted or error-free. XIOtech furthermore states that not all errors in XIOtech Software or its media can be corrected or need correction, nor does XIOtech warrant that all defects in XIOtech Software or its media will be corrected. XIOtech has no control over the conditions under which You use the XIOtech Software or media and does not and cannot warrant the results obtained by such use. XIOtech does not warrant that the functions contained in the XIOtech Software will meet Your requirements or that XIOtech Software or its media will operate in combination with other software or hardware selected by You for use by You.

B. Any Third-Party Software delivered by XIOtech, is supplied "AS IS." In the case of Third-Party Software and/or computer problems, You will look solely to the warranties and remedies, if any, provided by the Third-Party Software and/or computer manufacturer.

C. XIOtech is not responsible for problems caused by changes in or modifications to the operating characteristics of any computer or operating systems for which the Software Product is procured by You, nor is XIOtech responsible for problems which occur as a result of the use of Software Product in conjunction with any software supplied by

XIOtech Corporation End User License Agreement

You or with a computer which is incompatible with the operating system for which the Software Product is being procured by You.

D. XIOtech's entire liability and Your sole, exclusive remedy with regard to the warranty shall be, at XIOtech's sole discretion, the replacement of the Software Product that does not meet the Limited Warranty and which is returned to XIOtech within such warranty period, or, the reimbursement of the license fee paid by You for such Software Product. This Limited Warranty is void if failure of the Software Product has resulted from accident, misuse, abuse, attempted repair or maintenance, causes external to the Specified XIOtech Product, Software Product or Related Documentation such as electrical power fluctuations or failure, neglect, water, fire, normal wear and tear, failure to follow supplied user instructions or misapplication of either the Software Product or the Specified XIOtech Product. Any replacement Software Product will be warranted as provided above from the date of replacement by XIOtech for the remainder of the original warranty period or thirty (30) calendar days, whichever is longer. **XIOtech DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SOFTWARE PRODUCT AND THE RELATED DOCUMENTATION.**

12. Limitation of Liability. XIOtech WILL NOT BE LIABLE FOR INJURIES OR DAMAGES TO PERSONS OR PROPERTY RESULTING FROM ANY CAUSE WHATSOEVER, WITH THE EXCEPTION OF BODILY INJURIES, DEATH OR DAMAGE TO TANGIBLE PROPERTY DIRECTLY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF XIOtech. IN NO EVENT SHALL XIOtech BE LIABLE FOR ANY DAMAGES FOR OR RESULTING FROM LOSS OF OR DAMAGE TO DATA, LOSS OF USE, LOSS OF REVENUE, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS AND XIOtech FURTHER DISCLAIMS ANY AND ALL LIABILITY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EVEN IF XIOtech HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES. IF ANY REMEDY HEREUNDER FAILS OF ITS ESSENTIAL PURPOSE, OR IN ANY OTHER EVENT, XIOtech'S TOTAL AGGREGATE LIABILITY UNDER THIS EULA SHALL NOT EXCEED THE AMOUNT OF THE LICENSE FEE PAID BY YOU FOR SUCH SOFTWARE PRODUCT HEREUNDER. THIS LIMITATION APPLIES TO ALL SOFTWARE PRODUCTS, SPECIFIED XIOtech PRODUCTS, AND/OR PRODUCTS INCLUDING AUTHORIZED SERVICES PERFORMED DURING AND AFTER THE WARRANTY PERIOD.

13. Construction. XIOtech is willing to license the Software Product to You only in consideration of and in reliance upon the provision of this EULA limiting the exposure of XIOtech to liability. Such provisions constitute an essential part of the bargain underlying this EULA and have been reflected in the license fee and other consideration specified in this EULA.

14. U.S. Government Restricted Rights. The Software Product and Related Documentation have been developed exclusively at private expense by XIOtech or its suppliers. The Software Product and Related Documentation are provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the Government is subject to restrictions as set forth in subparagraph (c) (1) (ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is XIOtech Corporation (or its affiliates), 6455 Flying Cloud Drive, Eden Prairie, MN 55344-3305.

15. Governing Law/Venue. See Volume Pricing Contract Section 15.

16. Dispute Resolution. A. See Volume Pricing Contract Appendix A item 13

17. Severability. If any provision or any part of a provision of these terms and conditions are held by a court, government agency or other

legal authority of competent jurisdiction to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not invalidate, void or render unenforceable any other portion of these terms and conditions but rather the entire EULA shall be construed as if it did not contain the particular invalid, illegal or unenforceable provision or provisions, and the rights and obligations of each party shall be construed and enforced accordingly.

18. Export. You may not export the Software Product or any portion thereof outside of the United States without first obtaining all required licenses from the United States Department of Commerce or any other governmental agency.

19. Entire Agreement. These terms and conditions represent the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes and replaces any and all prior representations, and negotiations whether written or oral. No modifications or waiver of these terms and conditions hereof will be binding upon XIOtech unless approved in writing by an authorized representative of XIOtech.

20. Governing Language. The parties hereto hereby confirm that they have agreed that all written agreements between them be prepared in the English language only and such language shall be the governing language. Les parties aux présentes confirment qu'elles ont agréé que tous les documents entre eux par écrit soit rédigé dans la langue anglaise seulement, et telle langue sera la langue de contrôle.

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XIOtech, as Manufacturer or Seller, End User Support Plan Agreement

THIS AGREEMENT (hereinafter "Agreement"), is between XIOtech Corporation, (including its Subsidiaries, if referenced elsewhere herein) (hereinafter "XIOtech"), and State of Texas a/an government entity (hereinafter "Customer"). XIOtech and Customer (the "Parties", or individually "Party"), intending to be legally bound and in consideration of the mutual promises made herein, and other valuable consideration, the sufficiency and receipt of which is hereby acknowledged by the Parties, agree as follows:

1. **DEFINITIONS & INTERPRETATION.** For the purposes of this Agreement, the following terms and all other terms defined in this Agreement when capitalized shall have the meanings so defined unless the context clearly indicates otherwise.

"Coverage Period" - the number of days each week, and the number of hours during each of those days, during which Services will be available to Customer from XIOtech. Coverage period "7X24" means seven (7) days per week, twenty-four (24) hours per day, three hundred sixty-five (365) days during the applicable Support Period. Coverage period "5X9" means five (5) business days per week, and nine (9) hours per day, during XIOtech's normal business hours, during the applicable Support Period.

"Data Sheet" - the applicable XIOtech documentation, including but not limited to, XIOtech Support Programs and Optional Services Product Sheets, effective at the time such Services are purchased by Customer, which describe each Support Option or Service available under this Agreement.

"Enhancement" - a modification to the Material that adds new features or functionality.

"Material" - the Products and/or Software offered for sale or licensed to Customer at time of sale. Material does not include Services.

"Order Acknowledgment" - a document furnished by XIOtech acknowledging the receipt of a Purchase Order and XIOtech's agreement to supply the Material and/or Services stated therein under the terms and conditions stated herein.

"Product" - equipment of XIOtech design and manufacture, or other manufacturer's equipment offered for sale by XIOtech through a reseller, distribution channel, or directly to Customer. Product does not include Software or Services.

"Purchase Order" - Customer's document, of any format, for the acquisition of Material and/or Services.

"Quotation" - either XIOtech's written offer to sell Services and/or Material or XIOtech's document that provides a summary of the Statement of Work and pricing corresponding to the Statement of Work.

"Services" - various types of services provided by XIOtech to Customer and awarded by DIR as a result of the ITN BUSOP-TMP-010, including, but not limited to, Software support, Material maintenance, installation services, training, on-site support, applications engineering, site engineering, services supplied under a Support Option, and/or any other available services provided by XIOtech to Customer. Services also include any services specified in a Quotation from XIOtech to Customer for which Customer has issued a Purchase Order and XIOtech has issued an Order Acknowledgment. Services does not include Material, Products, and/or Software. Additional fees may apply for Services.

"Software" - a set of instructions which allows hardware/non-intelligent Products to store, manipulate and/or process information. Software is licensed by XIOtech separately, or licensed as part of a Product sale. Software is not Product or Services.

"Statement of Work" - XIOtech's document which describes in detail the work or Services to be performed and any Material to be supplied.

"Support Option" - a support program in which XIOtech provides Services to Customer under the provisions of, and as described and defined in, the applicable Data Sheet.

"Support Period" - the term for which Customer has purchased a Support Option and during which XIOtech shall provide such Services.

"Revision" - the level of Software denoted by the number associated with such Software to the left position of the decimal (i.e. "Software name 6.1" is revision 6, release level 1)

"Response Time" - the time period for a defined type of Service response by XIOtech in accordance with the provisions of the selected Support Option.

"Update" - a Software release that either provides remedial actions for a Software deficiency or improves operating performance of Software but does not alter basic functionality of Software.

Interpretation within this Agreement is defined as follows: {i} headings are for convenience only and shall not affect the construction, meaning or interpretation of this Agreement; {ii} the singular includes the plural and conversely; {iii} reference to a party ("Party", collectively "Parties") means XIOtech and Customer exclusively; and, {iv} in the event of a conflict between a Purchase Order or associated documents and the terms and conditions herein, the terms and conditions herein including the Order Acknowledgment and Quotation shall govern. If there is any internal inconsistency in the documents comprising this Agreement, to the extent of the inconsistency, the documents stated herein shall prevail in the following descending order for the purposes of defining the actual Agreement terms and conditions on the date such document review is conducted: {a} the terms and conditions within an Agreement amendment; {b} the terms and conditions within the Agreement; {c} the terms and conditions within an Agreement addendum, attachment, appendix or exhibit.

2. **OBJECTIVE OF AGREEMENT.** A. Subject to the provisions of this Agreement, XIOtech, as a manufacturer and supplier of material and/or services for the data storage marketplace intends to provide Material and/or Services to Customer in accordance with the terms stated herein; and, Customer desires to purchase such Material and/or Services from XIOtech pursuant to this Agreement.

B. Support Options available to Customer and the descriptions, terms and provision thereof shall be in accordance with the applicable Data Sheet in effect at the time of XIOtech's acceptance of the applicable Purchase Order for such Services. Services selected by Customer to be provided by XIOtech shall be in accordance with the description provided in the applicable Quotation for such Services. The initial Support Period selected by Customer shall be effective concurrently with XIOtech's standard limited warranty periods provided for such Material or Services.

3. **TERM OF AGREEMENT.** See Section 1 of the Volume Pricing Contract DIR-BUSOP-023 (hereinafter "Volume Pricing Contract")

4. **ACCEPTANCE OF PURCHASE ORDERS.** See Section 8 of the Volume Pricing Contract.

B. Customer will submit all new or confirming Purchase Orders hereunder to XIOtech or XIOtech's named Resellers. As used in the Volume Pricing Contract and attached Appendix and elsewhere herein, "Acceptance of Purchase Order" shall mean XIOtech's agreement, as evidenced by the issuance of an Order Acknowledgment, to supply the Material and/or Services identified in such Purchase Order under the terms and conditions herein.

5. **PURCHASE ORDER CHANGES.** A. Customer may not change its Purchase Order without XIOtech's written consent. Any revision in drawings, designs, specifications, Material, Services, shipment or completion dates or Purchase Order termination or cancellation in whole or in part requested by Customer may result in additional cost to Customer. Any additional cost to Customer will be at the then-current rates as set forth in the Volume Pricing Contract. XIOtech's performance of Customer's request shall commence only upon the issuance of a new

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Purchase Order or written amendment to an existing Purchase Order authorizing the applicable charge.

6. RENEWAL OF SUPPORT OPTION. A. Customer may renew any Support Option by providing a Purchase Order as provided in Section 8 of the Volume Pricing Agreement at least sixty (60) calendar days prior to the end of the then current Support Period.

B. Not Applicable

C. In the event {i} Customer's Product or Software is not within a warranty period or Support Period, or {ii} either party has rejected continued support or {iii} Customer has terminated this Agreement with respect to such Product or Software, and {iv} Customer requests XIOtech to provide coverage under a Support Option for such Product or Software in a Purchase Order, XIOtech will commence to provide such coverage under this Agreement, at the level of coverage and for the Support Period set forth in such Purchase Order, upon XIOtech's prior certification that such Product or Software is in good operating condition. Such certification shall be at XIOtech's then-current price as set forth in the Volume Pricing Contract and shall be subject to the invoicing procedure described hereinabove. If Customer rejects such prior certification by XIOtech, XIOtech will provide Services for such Product or Software on a time and materials fee basis to be paid by Customer to XIOtech.

7. PRICING, INVOICING, PAYMENT TERMS, & ACCEPTANCE. A. Pricing for Services shall be those stated within a written Quotation issued by XIOtech. Unless otherwise stated, all prices are expressed and payable in United States dollars. Errors or omissions in price are subject to correction by XIOtech, at any time.

B. XIOtech reserves the right to adjust Support Option prices and/or prices for Services not more than once per twelve (12) month period by providing written notice to Customer at any time prior to the renewal date of the Support Period. Annual increases will not apply to Service Orders accepted by XIOtech prior to the effective date of the increase.

C. The price of Services may subsequently be adjusted at any time and in XIOtech's sole discretion to reflect the impact of: {i} Customer changes or delays which are outside of the scope of Services; {ii} legal/regulatory changes which occur after the issuance of the Quotation and/or Statement of Work for the particular Services; and, {iii} the failure of Customer to perform its obligations under this Agreement. XIOtech will provide a written notice and reason for the adjustment within a reasonable period of time after XIOtech becomes aware of an event under which XIOtech intends to request an adjustment. The parties will then determine, in a commercially reasonable manner, the adjustment that is appropriate. Pending such agreement, XIOtech will continue to perform the Services specified in the Purchase Order for **ten (10) business days** or such other greater time that may be agreed to in writing by XIOtech, unless {a} Customer fails to pay amounts due to XIOtech when due; {b} an event specifically identified in the Quotation and/or Statement of Work permitting suspension or termination of the Services occurs; or {c} Customer is otherwise in breach. In the event an adjustment to the price has not been made within the aforementioned **ten (10) business days**, XIOtech shall have the right to terminate any or all Purchase Orders, in whole or in part and in addition to any other remedy available to XIOtech, and Customer shall make payment to XIOtech on account of all Materials delivered and/or Services rendered in accordance with the Volume Pricing Contract Section 8.

D. Customer understands XIOtech has relied on Customer's commitment for 1 year, 2 years or 3 years, etc., or length and scope of Services in determining the fee payable by Customer for any Support Option selected or Services purchased. Based on that reliance, a non-renewal or termination charge may apply, as provided herein.

E. If XIOtech provides any replacement parts on a cross ship or exchange basis and Customer fails to return to XIOtech the part for which

XIOtech has provided a replacement within thirty (30) calendar days of XIOtech shipping such replacement part to Customer, XIOtech will invoice Customer and Customer agrees to pay for such non-returned part at XIOtech's then current price set for in the Volume Pricing Contract part.

F. Tax Exempt; See Volume Pricing Contract 7-D.

G. Invoices for Material will be rendered as shipments are made. Invoices for a Support Option will be issued in advance and are due and payable, without setoff or deduction, within thirty (30) calendar days from the date of the invoice and prior to the commencement of any Support Period or renewal thereof. Failure to pay any invoice for Service prior to the commencement of any Support Period or renewal thereof shall be deemed by XIOtech as an election of non-renewal by Customer of such Services. Invoices for any Services based upon a time and materials charge or Services not included in a Support Option will be issued in accordance with an established milestone schedule or upon completion of such Services or part thereof and are due and payable, without setoff or deduction, within thirty (30) calendar days from the date of the invoice. If, in XIOtech's sole judgment, Customer's financial condition does not justify continuation of the existing payment terms, XIOtech may, at its sole discretion, change such terms without notice.

H. Title, risk of loss, damage and insurance responsibilities for the Products pass from XIOtech to Customer EXW destination location (Incoterms 2000) subject to the Volume Pricing Contract Section 7-C. Title to all Software shall remain with XIOtech or its licensors, but risk of loss, damage and insurance responsibilities regarding the copy shipped to Customer shall pass to Customer EXW destination location (Incoterms 2000). For all Materials shipped, XIOtech shall retain a security interest in the Materials until payment, in full, has been received by XIOtech for such Materials delivered and Services performed. Material shall be deemed accepted by Customer EXW destination location (Incoterms 2000). Services shall be deemed accepted by Customer upon acceptance.

8. RESPONSIBILITIES OF XIOtech. A. Subject to the terms and conditions of this Agreement, XIOtech will, during the applicable Support Period, provide those Services described in the applicable Data Sheet for each Support Option.

B. If Customer requests that Services be performed outside the Coverage Period or Support Period, such Services will be furnished in accordance with the then current Volume Pricing Contract Appendix E.

C. XIOtech will provide such other Services as may be offered by XIOtech from time to time, and procured by Customer by a Purchase Order, subject to the terms and conditions of this Agreement, applicable Data Sheets and/or XIOtech Quotation.

D. XIOtech may, at its option, and at no additional charge to Customer, make Enhancements or provide Updates to covered Products or Software, respectively. XIOtech is not obligated to provide Services under this Agreement for a Product or Software if Enhancements or Updates were offered by XIOtech, and declined by Customer, and the Product or Software level is beyond the current Revision level minus one (1) previous Revision level.

E. In providing Services, XIOtech reserves the right to use remanufactured and/or refurbished Material and/or parts, and to use Material/parts from different manufacturers. Material/parts will be new or equivalent to new and all exchanged Material/parts become the property of XIOtech. In addition, any and all Materials/parts supplied by XIOtech under this Agreement or in performance of Services shall be supplied under and governed by the Volume Pricing Contract and XIOtech's then current Terms and Conditions of Sale.

9. RESPONSIBILITIES OF CUSTOMER. A. Customer agrees to maintain operating conditions within the common environmental range of

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all Products and Software covered under this Agreement in accordance with manufacturers' or XIOtech's specifications.

B. Customer will notify XIOtech immediately of any Product and/or Software failures or defects.

C. Customer will provide at least sixty (60) calendar days written notice to XIOtech of its intent to relocate or remove a Product or Software from Customer's premises. Customer and/or anyone other than XIOtech may not relocate or remove Material from the room in which it was initially installed.

D. Customer will pay all amounts payable under this Volume Pricing Contract Section 8.

E. During the performance of any Services, Customer shall assist and cooperate with XIOtech by making personnel available to XIOtech for consultation and providing other information and data required for the performance of the Services, whenever such assistance, personnel, information and data are reasonably requested by XIOtech.

F. Customer will be solely responsible for preparation of the site, at which XIOtech will perform the Services, to the specifications and in accordance with the time schedule stated in the applicable XIOtech Quotation, Statement of Work, and/or Support Option. Customer agrees to use every effort to keep such site in compliance with all applicable health and safety regulations and is free from all friable asbestos and hazardous contamination or pollutants.

G. Customer will fully comply with all applicable laws, governmental orders and the like affecting this Agreement and the purchase and use of Material and/or Services. Customer will fully comply with all United States laws applicable to the use, sale or license of Material and/or Services, including but not limited to the Foreign Corrupt Practices Act and the Export Administration Act.

H. Prior to the date specified in the Quotation, Statement of Work, and/or Support Option for the performance of Service, Customer will (a) obtain and pay for all governmental or third party consents, permits, approvals, licenses and public and private easements necessary for XIOtech's unrestricted access to any site or location needed for performance of the Services and delivery of the Material, and (b) will notify XIOtech in advance of any requirements including all local laws, regulations, ordinances and the like to which XIOtech is or will be required to comply in the rendering of Services and in the supplying of Materials hereunder.

10. EXCLUSIONS AND SERVICE LIMITATIONS. XIOtech will not be obligated to furnish Services under this Agreement if:

A. adjustment, repair, or parts replacement is required because of accident, neglect, misuse, improper programming, failure or fluctuation of electrical power, environmental controls, natural or man-made disasters, or causes other than normal use;

B. any Product or Software is: relocated, moved or removed from the exact position in which it was initially installed, modified, maintained, or repaired, or attempts are made to do so without XIOtech's prior written approval, except if performed by XIOtech personnel, a XIOtech Certified Technician, a subcontractor selected by XIOtech or at the specific direction of XIOtech personnel, XIOtech Certified Technician or subcontractor selected by XIOtech;

C. any Product or Software is not used for Customer's internal business purposes or was distributed, resold, sublicensed, leased or transferred in any way by Customer to another person or entity, however situated, without XIOtech's prior written consent and re-certification of such Product or Software, unless at the time of such distribution, resale, sublicense or transfer, a current distributor or reseller agreement is in effect between Customer and XIOtech;

D. Customer fails to perform any of its obligations pursuant to this Agreement; or

E. Customer fails to perform any of its responsibilities as set forth in published specifications with respect to any Product, Software, Support Option purchased under the Volume Pricing Contract or this Agreement including all Appendices.

11. INSPECTION OF MATERIAL/SERVICES AND RETURNS. **A.** Upon delivery of the Material, or the performance of Services, Customer will inspect the Material/Services for conformity to the Purchase Order, Statement of Work or Quotation (as applicable) within a period of **thirty [30] calendar days** (hereinafter "Inspection Period"). If any shipped Material does not substantially conform to the applicable Purchase Order, Statement of Work or Quotation (as applicable) such non-conforming Material may be returned in undamaged condition to XIOtech, at XIOtech's expense, if i) XIOtech receives from Customer written notice of such nonconformance within the Inspection Period, ii) written prior approval, which shall not be unreasonably withheld, is given by XIOtech, and iii) Customer provides to XIOtech proof of purchase and a written explanation for such return. Upon verification by XIOtech of such nonconformity, as Customer's sole remedy, XIOtech, at its sole option, will either i) correct such failure, ii) replace such returned Material with conforming Material, or iii) refund the purchase price paid by Customer for such returned Material. If any Service does not substantially conform to the applicable Purchase Order, Statement of Work or Quotation (as applicable) Customer shall, within the Inspection Period, notify XIOtech in writing the details of such nonconformance and upon verification by XIOtech of such nonconformance, as Customer's sole remedy, XIOtech will take action to re-perform such Services, at no additional charge (if determined by XIOtech to be XIOtech's fault) within a reasonable time.

B. For returns allowed above, Customer must contact XIOtech to obtain an authorization number and return the Material to the location designated by XIOtech with all transportation charges paid by XIOtech as provided for in Appendix A item 11.

C. MATERIAL MAY NOT BE RETURNED EXCEPT AS PROVIDED IN THIS SECTION.

12. PRODUCT AND SERVICES WARRANTY AND WARRANTY LIMITATIONS. **A.** XIOtech warrants from the date of XIOtech's initial shipment from its facility, that Product bearing the XIOtech name will substantially conform to XIOtech published specifications in effect as of the date of such shipment and will be free from substantial defects in material and workmanship under normal use, given proper installation and maintenance, for the period of time and under the terms and conditions as more particularly set forth in XIOtech's current published Product warranty document in effect on the date of such shipment. XIOtech further warrants to Customer that all Services performed by XIOtech for Customer will be provided in a workmanlike manner. Warranty of XIOtech's Software is set forth in the applicable software license. Customer must promptly notify XIOtech of any claimed defect in the Product and/or Services. XIOtech or its agent may inspect the Product or workmanship on Customer's premises. Product returned to XIOtech under warranty must be shipped prepaid by XIOtech.

B. XIOtech's entire liability and Customer's exclusive remedy whether in contract, tort or otherwise, for any claim related to or arising out of breach of the warranty covering Product or Services shall be correction of defects by repair, replacement, re-performance of Service or credit, at XIOtech's discretion. Refurbished Product may be used to repair or replace the Product. Customer shall have no claim to Product that was replaced or the components therein which were replaced. XIOtech has no liability with respect to claims relating to or arising from the use of equipment not bearing the XIOtech name.

C. XIOtech does not warrant that the operation of the Product will be uninterrupted or error-free. XIOtech does not warrant that the functions of the Product will meet Customer's requirements or that the Product will

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operate in combination with other products selected by Customer for its use. XIOtech assumes no liability with respect to {i} defects caused by the relocation, movement or removal from the exact position in which it was initially installed, modification, repair, installation, operation or maintenance, including attempts to do any of the above, except as described in XIOtech's documentation or if performed by XIOtech personnel, a XIOtech Certified Technician, a subcontractor selected by XIOtech or at the specific direction of XIOtech personnel, XIOtech Certified Technician or subcontractor selected by XIOtech; or {ii} negligent or other improper use of the Product. All equipment and software not bearing the XIOtech name, is supplied "AS IS" and Customer will look solely to the warranties and remedies, if any, provided by the equipment/software manufacturer or vendor thereof. In addition, XIOtech assumes no liability for equipment or services furnished by Customer nor does this warranty cover any copy of or update to any user manual for the Product. No agent, distributor, or representative is authorized to make any warranties on behalf of XIOtech or to assume for XIOtech any other liability in connection with any Product or Services.

D. WITH RESPECT TO ALL PURCHASES OF PRODUCT AND/OR SERVICES FROM XIOTECH BY CUSTOMER, THE ABOVE WARRANTY REPLACES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND ALL OTHER OBLIGATIONS OF XIOTECH, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES ARE DISCLAIMED AND EXCLUDED BY XIOTECH.

13. LIMITATION OF LIABILITY. XIOTECH WILL NOT BE LIABLE FOR ANY INJURIES OR DAMAGES TO PERSONS OR PROPERTY RESULTING FROM ANY CAUSE WHATSOEVER, WITH THE EXCEPTION OF BODILY INJURIES, DEATH OR TANGIBLE PROPERTY DAMAGE DIRECTLY CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF XIOTECH. IN NO EVENT SHALL XIOTECH BE LIABLE FOR ANY DAMAGES RESULTING FROM LOSS OF OR DAMAGE TO RECORDS OR DATA, LOSS OF USE OR LOSS OF REVENUE OR PROFIT. XIOTECH FURTHER DISCLAIMS ANY AND ALL LIABILITY FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR OTHER SIMILAR DAMAGES REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EVEN IF SUCH LOSSES OR DAMAGES ARE FORESEEABLE AND/OR XIOTECH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES. IF ANY REMEDY HEREUNDER FAILS OF ITS ESSENTIAL PURPOSE, OR IN ANY OTHER EVENT, XIOTECH'S MAXIMUM TOTAL AGGREGATE LIABILITY HEREUNDER SHALL NOT EXCEED THE DEPRECIATED VALUE OF THE AFFECTED MATERIAL OR THE ACTUAL AMOUNT PAID TO XIOTECH FOR THE AFFECTED SERVICES. FOR THE PURPOSE OF THIS AGREEMENT DEPRECIATION SHALL BE A STANDARD FIVE YEAR DEPRECIATION ON A MONTHLY BASIS OVER THE COST OF THE PURCHASE ORDER.

14. CONFIDENTIAL INFORMATION. A. See Appendix A Section 4 B. The Confidential Information will not be considered confidential and will not be subject to the foregoing if the Receiving Party can demonstrate that the Confidential Information: {i} is, at the time of disclosure, or thereafter becomes, a part of the public domain without breach of these terms by the Receiving Party (provided, however, that the act of copyrighting shall not cause or be construed as causing the copyrighted materials to be in the public domain); {ii} was previously known by the Receiving Party without any obligation to hold it in confidence; {iii} is received from a third party free to disclose such Confidential Information without restriction; {iv} is independently developed by the Receiving Party without the use of the Confidential Information; {v} is approved for release by written authorization of the Disclosing Party, but only to the extent of

such authorization; {vi} is required by law or regulation to be disclosed, but only to the extent and for the purposes of such required disclosure; {vii} is disclosed in response to a valid order of a court or other governmental body, but only to the extent of and for the purposes of such order, provided that the Receiving Party who is subject to the order first notifies the Disclosing Party of the order and permits the Disclosing Party to seek an appropriate protective order; or {viii} is disclosed to a third person by the Party which owns the Confidential Information, without restrictions similar to those specified above

D. The Receiving Party's right to possess and use information of the Disclosing Party shall terminate upon: {i} the latter of such time as the Receiving Party no longer has a need to retain such information for the purpose of fulfilling its obligations under this Agreement or under any other agreement between the Parties; or any termination, cancellation or expiration of this Agreement; or {ii} the request of the Disclosing Party. At such time the Receiving Party shall immediately deliver to the Disclosing Party or certify destruction of all the proprietary materials and Confidential Information and all copies or any portion thereof, except a single archival copy which may be held by the Receiving Party's attorney. The Receiving Party shall, upon completion of such delivery and or destruction, state in writing to the Disclosing Party it has fulfilled its obligations under this Agreement.

E. The Receiving Party recognizes and agrees that the unauthorized use or disclosure of the Confidential Information would cause irreparable injury to the Disclosing Party for which it would have no adequate remedy at law, and that any actual or contemplated breach of this Section will entitle the Disclosing Party to seek immediate injunctive relief prohibiting such breach, in addition to any other rights and remedies available to it. The obligations herein contained will expressly survive the termination, cancellation or expiration of this Agreement.

15. INTELLECTUAL PROPERTY RIGHTS. A. All drawings, data, designs, tooling, equipment, procedures, engineering changes, inventions, trade secrets, copyrights, mask works, source code, object code, patents, patent applications, know-how, computer and/or Product Software and all parts thereof, trademarks and all other information, technical or otherwise which was developed, made or supplied by or for XIOtech in the production of any Material or the performance of any Service sold, rendered or licensed hereunder, including any and all derivative works, will be and remain the sole property of XIOtech (or its licensors, if any). Customer agrees not to reverse engineer any Materials. Customer shall respect such property rights of XIOtech, fully comply with all laws and regulations in respect thereof. Any reasonable expenses incurred in this regard by Customer shall be reimbursed by XIOtech. Customer acknowledges XIOtech's exclusive right, title and interest in and to XIOtech's patents, copyrights or trademarks and Customer will not, at any time contribute to, do or cause to be done any act or thing in any way impairing or intending to impair any part of such right, title and interest.

B. No licenses, express or implied, under any patents, trademarks, copyrights or other intellectual property is granted by XIOtech to Customer except as otherwise may be provided under a separate agreement or license between the Parties.

16. PROPRIETARY RIGHTS INDEMNIFICATION. A. If any Product bearing the XIOtech name, in XIOtech's opinion, becomes the subject of a claim of infringement of a valid United States copyright or patent, XIOtech shall, at its option and expense, either: {i} modify the Product to make it non-infringing; {ii} settle such claim by procuring for Customer the right to continue using the Product; or {iii} defend Customer against such claim. If XIOtech elects to defend Customer against such claim, XIOtech will pay Customer for any damages actually incurred which are awarded by a court of final jurisdiction, provided Customer gives XIOtech prompt written notice of all facts and circumstances necessary or desirable for a proper defense of same, XIOtech is given sole control over the

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defense of such claim, and Customer cooperates fully with XIOtech in the defense of such claim. XIOtech shall not be responsible for any settlement made without XIOtech's written consent.

B. If, in XIOtech's opinion, none of the foregoing alternatives are reasonably available to XIOtech, then XIOtech may discontinue the sale of the Product. If XIOtech elects to discontinue the sale of the Product as provided for in this Section, Customer may return the Product, including any associated media, any printed material, and any "online" or electronic documentation to XIOtech and receive a prorated refund of the Product purchase cost based on an established prorated period of five (5) years from date of original Product shipment by XIOtech.

C. XIOtech shall have no liability for any claim of patent or copyright infringement based upon: **{i}** use of the Product in a manner other than for which it was intended; **{ii}** any infringement, or alleged infringement, of any patent or copyright issued by any country other than the United States; **{iii}** modifications or changes made to the Product which are not authorized by XIOtech; **{iv}** operation of the Product in combination with other products selected by Customer; **{v}** XIOtech's compliance with Customer's designated designs, material usage or specification furnished by Customer; **{vi}** Customer's use of the Product after notification by XIOtech to discontinue use of such Product; or **{vii}** Customer's use of Product that is not the latest or current version of the Product. In the case of **{iii}**, **{iv}**, **{v}**, **{vi}** or **{vii}** above, Customer shall defend, indemnify and hold XIOtech harmless against any claim of infringement of any copyright or patent solely to the extent permitted under law.

D. THE FOREGOING STATES THE FULL LIABILITY OF XIOtech ARISING OUT OF OR RELATED TO INFRINGEMENT OR ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHT.

17. TERMINATION & CANCELLATION. A. Upon receipt of any such termination notice, XIOtech shall immediately cease performing work and incurring costs in connection with such Purchase Order. After receipt of XIOtech's invoice, Customer will pay XIOtech in accordance with the applicable Purchase Order for all Material delivered and any Services performed, including work under such Purchase Order performed prior to such date for termination in accordance with Section 5 (Purchase Order Changes).

B. Either Party may, upon written notice to the other Party, cancel this Agreement including any or all Purchase Orders effective immediately if: **{i}** either Party makes an assignment for the benefit of creditors, is unable to pay its debts as they become due, files a voluntary petition in bankruptcy; is adjudicated to be a bankrupt or an insolvent debtor; files a petition seeking for itself any reorganization; or consents to or acquiesces in the appointment of a trustee, receiver, liquidator, or similar officer to take charge of all or part of its priority; **{ii}** either Party becomes insolvent or has a petition in bankruptcy or any proceeding seeking involuntary reorganization or similar relief is filed against it, or if any trustee, receiver or liquidator of it or any substantial part of its business assets or properties is appointed without the other Party's consent or acquiescence; or **{iii}** either Party ceases doing business as a going concern or it or its shareholders take any action looking to its dissolution or liquidation.

C. In addition to those rights specified above and in Section(s) 24, 25, 26, and 27 of Appendix A, XIOtech may, at XIOtech's option, cancel this Agreement including any Purchase Orders effective immediately upon giving written notice to Customer following the occurrence of any of the following conditions, which Customer agrees shall constitute just cause for cancellation by XIOtech: **{i}** failure of Customer to make payment for any Purchase Order in accordance with the terms of this Agreement or as agreed upon in writing between the Parties; **{ii}** any violation by Customer of **Section 9.G. (Compliance with Applicable Laws)**; or **{iii}** any change in

the direct or indirect ownership of Customer if, in XIOtech's opinion, such change may be detrimental to XIOtech's interest hereunder.

D. Any cancellation pursuant to this **Section 17** will be in addition to and will not be exclusive of or prejudicial to any other rights or remedies at law or in equity available to the Party terminating or canceling this Agreement, unless stated otherwise elsewhere in this Agreement.

18. RIGHTS & OBLIGATIONS UPON TERMINATION OR

CANCELLATION. A. The termination or cancellation of this Agreement shall not affect the obligations (or remedies pertaining to performance) of either Party pursuant to: **{i}** Customer's payment to XIOtech for any money due resulting from Services performed and/or Material shipped or in Customer's possession, and not paid for; **{ii}** the protection of Confidential Information provided the other Party; and **{iii}** any Purchase Orders previously accepted under the terms of an Order Acknowledgment and which have not been cancelled or terminated.

B. In the event of cancellation of this Agreement and/or a Purchase Order issued hereunder by XIOtech under Sections 26 of Appendix A, or termination of this Agreement and/or a Purchase Order issued hereunder by Customer under Sections 17.A and/or 17.B, XIOtech shall be entitled to retain, and Customer shall not be entitled to a refund of all sums paid by Customer in relation thereto.

C. In the event of cancellation of this Agreement and/or a Purchase Order issued hereunder by Customer under Sections 17.C and/or 17.D, or termination of this Agreement and/or Support Option by XIOtech under Section 17.A., XIOtech shall refund to Customer on a pro-rata basis for any unused support fees (calculated on a monthly basis) or fees for Services not yet rendered by XIOtech which have been paid by Customer under the terminated Agreement and/or Purchase Order(s). XIOtech may offset any outstanding amounts payable by Customer prior to the date of such cancellation or termination in calculating Customer's refund.

19. NONRENEWAL/LAPSE IN COVERAGE. A. Upon non-renewal by Customer of any Service Order(s), and/or upon Customer providing XIOtech a notice of discontinuation and/or non-renewal of Service, XIOtech will reimburse Customer on a pro-rata basis for any unused support fees (calculated on a monthly basis) or fees for Services not yet rendered by XIOtech, which have been paid by Customer hereunder, less a non-renewal or termination charge equal to twenty-percent (20%) of all amounts paid and/or payable by Customer for such terminated Service Order(s). XIOtech may offset any outstanding amounts payable by Customer prior to the date of non-renewal or termination in calculating Customer's reimbursement. Non-renewal and/or termination of any Service Order(s) will not alter either Party's prior obligation to pay any amount due under this Support Agreement.

B. XIOtech may charge Customer an inspection or re-certification fee for reinstatement of a lapsed or terminated Support Period. Fees will be based on then current time and materials charges set forth in the Volume Pricing Contract. Customer will receive prior notice of and may reject any such fees before they are incurred.

20. GENERAL PROVISIONS. A. **Discontinuation.** XIOtech shall have no obligation hereunder to provide Services for Product or Software which XIOtech has provided Customer a notice of discontinuation of such Services, effective as of the date provided in such notice. XIOtech will use commercially reasonable efforts to provide Services for Product, Software or any component thereof which XIOtech has provided Customer a notice of its end-of-life or discontinuation of support from the manufacturer, effective as of the date provided in such notice. XIOtech retains all rights to change the Material and/or Services or may discontinue any Material and/or Services with or without notice to Customer at any time and at XIOtech's sole discretion.

B. **Subcontracting.** XIOtech reserves the right, in XIOtech's sole discretion, to subcontract this Agreement, any Purchase Order and/or any

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Services to be preformed by XIOtech hereunder in whole or in part, without notice or consent of Customer. Any subcontracting shall be in accordance with Appendix A, item 22.

C. Modification. XIOtech reserves the right to modify the descriptions, terms, conditions and/or Services provided under any Support Option or Data Sheet, without notice or consent of Customer, and any such revised Support Option or Data Sheet will not apply to Purchase Orders accepted by XIOtech prior to the effective date of such modification.

D. Shipment And Service Dates. Shipment dates for Material and dates for performance of Services are estimated by XIOtech in good faith but are not guaranteed by XIOtech. Shipment within the continental United States are made FOB destination location with all international shipments made EXW destination location (Incoterms 2000). Material may be tendered in partial shipments at XIOtech's sole discretion. In the event of shipment delay requested by Customer, a delay caused by lack of shipping instructions or as a result of unforeseen events, XIOtech will store all Material effected thereby at Customer's sole risk and expense. In the event a delay is known at the time Customer issues a Purchase Order XIOtech will, upon request, provide Customer with the expense of such storage. XIOtech will invoice the Customer at the full price for the Material including an additional storage fee. Except as otherwise set forth in the Quotation and/or Statement of Work, XIOtech will have reasonable access to Customer's site and any other locations at which Services are to be performed at mutually agreed times for the purpose of performing the Services. Customer, regardless of the circumstances, will not hold XIOtech liable for any liabilities, penalties, direct or liquidated damages, or charges of any nature during shipment or delivery of Material or due to the late performance of any shipment or Service date.

E. Dispute Resolution. See Appendix A item 13..

F. Solicitation of Employment. Not Applicable.

G. Software License. XIOtech licenses to Customer, Software, when included with a Product sale or when purchased separately, only in accordance with the terms and conditions set forth in the XIOtech End User License Agreement ("EULA") or the EULA provided with the applicable Software, whichever is most current.

H. Assignment. Notwithstanding Section 2 of Appendix A, XIOtech may assign or pledge the payments due (and the documentation supporting such payment obligations) from Customer under this Agreement without being obligated to notify Customer thereof and without being obligated to obtain Customer's consent thereto. Any assignment of payments due by XIOtech shall not increase any obligations on behalf of Customer as a result of such assignment.

I. Severability. If any provision or any part of a provision of this Agreement is held by a court, government agency or other legal authority of competent jurisdiction to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not invalidate, void or render unenforceable any other portion of this Agreement but rather the entire Agreement shall be construed as if it did not contain the particular invalid, illegal or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

J. Force Majeure. See Section 23 of Appendix A.

K. Governing Language. The parties hereby confirm that they have agreed that all written documents between them be prepared in the English language only and such language shall be the governing language. Les parties aux presentes confirment qu'elles ont agree que tous les documents entre eux par écrit soit redigé dans la langue anglaise seulement, et telle langue sera la langue de contrôle.

L. Governing Law. See Section 15 of the Volume Pricing Contract.

M. Survival of Terms. See Section 29 of Appendix A.

N. Amendments and Waivers. See Section 15 of Appendix A.

O. Notices. See Section 13 of the Volume Pricing Contract.

P. Independent Business. The Parties agree that the relationship created by this Agreement is that of between independent contractors only. This Agreement does not create any employer-employee, agency, franchise, joint venture or partnership relationship between XIOtech and Customer. Customer is not authorized or empowered to represent or act as an agent, representative or distributor for XIOtech for any purpose. Customer will not, on behalf of XIOtech, either enter into any contract, undertaking or agreement of any kind whatsoever or make any promise, warranty or representation with respect to Material and/or Services.

Q. No Right to Resell. All Material and Services shall be used for Customer's internal business purposes only, and may not be distributed, resold, sublicensed, leased or transferred in any way to another person or entity however situated without XIOtech's prior written consent, unless, at the time of such distribution, resale, sublicense or transfer, a current distributor or reseller agreement is in effect between Customer and XIOtech authorizing such transaction.

21. ENTIRE AGREEMENT. Both Parties acknowledge that they have read this Agreement and all documents hereto and understand them and agree to be bound by their terms. Each Party further agrees that this Agreement, together with its documents, constitutes the complete and exclusive statement of the agreement between the Parties as to the subject matter hereof and with respect to any Purchase Order and the Materials and/or Services provided hereunder, and there are no agreements, understandings, conditions, warranties or representations, oral or written, express or implied, that are not merged herein or superseded hereby.

Appendix E "Magnitude 3D" Price List for Texas Department of Information Resources - Dated 2/19/04							
System	Part Number	List Price	Texas DIR Product Price	% Discount off List	Service List Price - Per 12 Months	Texas DIR Service - Per 12 Months	% Discount off List
Magnitude 3D 2TB Cluster Bundle - See Note 1	800345-000	\$200,658	\$120,395	40.00%			
Warranty Extension - Hardware (Per 12 Months/1 Year) - After 3 Year Warranty	020111-000				\$5,000	\$3,000	40.00%
Software Warranty (Per 12 Months/1 Year)	020110-000				\$19,166	\$11,500	40.00%
Magnitude 3D 4TB Cluster Bundle - See Note 1	800346-000	\$294,133	\$176,480	40.00%			
Warranty Extension - Hardware (Per 12 Months/1 Year) - After 3 Year Warranty	020111-000				\$6,000	\$3,600	40.00%
Software Warranty (Per 12 Months/1 Year)	020110-000				\$19,166	\$11,500	40.00%
Magnitude 3D Cluster Hardware Package - See Note 1	800347-000	\$71,667	\$43,000	40.00%			
Warranty Extension - Hardware (Per 12 Months/1 Year) - After 3 Year Warranty	020111-000				\$5,000	\$3,000	40.00%
Software Warranty (Per 12 Months/1 Year)	020110-000				\$3,334	\$2,000	40.01%
Magnitude 3D Cluster Hardware Package (no ICON) - See Note 1	800348-000	\$63,333	\$38,000	40.00%			
Warranty Extension - Hardware (Per 12 Months/1 Year) - After 3 Year Warranty	020111-000				\$4,750	\$2,850	40.00%
Note 1 - Standard Shipping Charges for Magnitude Cabinets shall be quoted to the DIR Customer at the then current standard shipping charges.							
Connectivity	Part Number	List Price	Texas DIR Product Price	% Discount off List	Service List Price - Per 12 Months	Texas DIR Service - Per 12 Months	% Discount off List
Brocade - 12000 16 Port Fibre Channel Switching Blade	770082-000	\$34,860	\$22,999	34.02%	See Below	See Below	N/A
Brocade - 12000 basic install & config service (2 days)	770199-000	\$6,250	\$5,000	20.00%	See Below	See Below	N/A
Brocade - 12000 bundle with 32 ports, 2 Gb	770074-000	\$124,280	\$76,999	38.04%	See Below	See Below	N/A
Brocade - 12000 bundle with 64 ports, 2 Gb	770073-000	\$197,690	\$125,999	36.26%	See Below	See Below	N/A
Brocade - 12000 Country Kit for North America / Japan	770075-000	\$290	\$257	11.38%	See Below	See Below	N/A
Brocade - 12000 Service Plan - 128 port High Availability 1 year	770183-000	\$7,169	\$7,169	0.00%	N/A	N/A	N/A
Brocade - 12000 Service Plan - 128 port Mission Critical 1 year	770184-000	\$13,961	\$13,961	0.00%	N/A	N/A	N/A
Brocade - 12000 Service Plan - 16 port blade High Availability 1 year	770187-000	\$747	\$747	0.00%	N/A	N/A	N/A
Brocade - 12000 Service Plan - 16 port blade Mission Critical 1 year	770188-000	\$1,455	\$1,455	0.00%	N/A	N/A	N/A
Brocade - 12000 Service Plan - 32 port High Availability 1 year	770185-000	\$2,683	\$2,683	0.00%	N/A	N/A	N/A
Brocade - 12000 Service Plan - 32 port Mission Critical 1 year	770186-000	\$5,224	\$5,224	0.00%	N/A	N/A	N/A
Brocade - 12000 Service Plan - 64 port High Availability 1 year	770181-000	\$4,180	\$4,180	0.00%	N/A	N/A	N/A
Brocade - 12000 Service Plan - 64 port Mission Critical 1 year	770182-000	\$8,140	\$8,140	0.00%	N/A	N/A	N/A
Brocade - 12000 with 128 ports - 2Gb (requires SFP GBICs and country	770072-000	\$305,820	\$219,000	28.39%	See Above	See Above	N/A
Brocade - 3200 8-port, 2GB Full-Fabric Switch	770164-000	\$8,499	\$6,799	20.00%	\$1,416	\$850	39.97%

Brocade - 3200 Upgrade Entry-fabric to Full-fabric with Multi-switch	770054-000	\$3,000	\$2,655	11.50%	\$500	\$300	40.00%
Brocade - 3200 Upgrade Entry-fabric to Full-fabric with Ultra Software	770055-000	\$5,000	\$4,425	11.50%	\$833	\$500	39.98%
Brocade - 3800 16-port Switch	770041-000	\$22,499	\$14,999	33.33%	\$3,750	\$2,250	40.00%
Brocade - 3800 Extra Slide Rack Mount Kit	770165-000	\$300	\$275	8.33%	\$50	\$30	40.00%
Brocade - Advanced Performance Monitoring Software for 2Gb Switches	770048-000	\$2,000	\$1,770	11.50%	\$334	\$200	40.12%
Brocade - Extended Fabric Support Software for 2Gb Switches	770047-000	\$2,000	\$1,770	11.50%	\$334	\$200	40.12%
Brocade - Fabric Watch Software for 2Gb Switches	770043-000	\$1,800	\$1,593	11.50%	\$300	\$180	40.00%
Brocade - Inter-switch Trucking for 2Gb Switches	770042-000	\$2,500	\$2,213	11.48%	\$416	\$250	39.90%
Brocade - QuickLoop Software for 2Gb Switches	770044-000	\$1,250	\$1,106	11.52%	\$209	\$125	40.19%
Brocade - Software Bundle for 3800 only: Enterprise	770050-000	\$3,440	\$3,044	11.51%	\$574	\$344	40.07%
Brocade - Software Bundle for 3800 only: Ultra	770051-000	\$7,640	\$6,671	12.68%	\$1,273	\$764	39.98%
Cable - 2 m LC Duplex/LC Duplex Fiber Optic Patch Cord	840056-005	\$208	\$125	39.90%	\$35	\$20	42.86%
Cable - 20 m LC Duplex/LC Duplex Fiber Optic Patch Cord	840056-002	\$260	\$165	36.54%	\$43	\$26	39.53%
Cable - 20 m SC Duplex/LC Duplex Fiber Optic Patch Cord	840055-002	\$225	\$145	35.56%	\$37	\$23	37.84%
Cable - 5 m LC Duplex/LC Duplex Fiber Optic Patch Cord	840056-000	\$205	\$130	36.59%	\$34	\$20	41.18%
Cable - 5 m SC Duplex/LC Duplex Fiber Optic Patch Cord	840055-000	\$170	\$110	35.29%	\$29	\$17	41.38%
Cambex - FibreQuik PC2000 Server HBA Bundle with Path Failover (AIX 5.1 environments only)	770264-000	\$6,563	\$5,250	20.01%	N/A	N/A	N/A
Cisco - 2Gbps Fibre Channel-LW Small Form-Factor Pluggable, LC	770236-000	\$1,200	\$850	29.17%	See Below	See Below	N/A
Cisco - 2Gbps Fibre Channel-SW Small Form-Factor Pluggable, LC	770235-000	\$500	\$320	36.00%	See Below	See Below	N/A
Cisco - AC Power Cord North America (110 VAC) 9120, 9140, 9216	770246-000	\$0	\$0	0.00%	N/A	N/A	N/A
Cisco - MDS 9000 16-port 1 / 2Gbps FC Module (SFPs sold separately)	770233-000	\$22,000	\$15,725	28.52%	See Below	See Below	N/A
Cisco - MDS 9000 32-port 1 / 2Gbps FC Module (SFPs sold separately)	770234-000	\$23,000	\$16,425	28.59%	See Below	See Below	N/A
Cisco - MDS 9000 Port Analyzer AC Power Cable	770320-000	\$0	\$0	0.00%	N/A	N/A	N/A
Cisco - MDS 9000 Port Analyzer Adaptor	770271-000	\$3,200	\$2,275	28.91%	See Below	See Below	N/A
Cisco - MDS 9120 20-Port FC Switch (SFPs sold separately)	770309-000	\$18,000	\$12,850	28.61%	See Below	See Below	N/A
Cisco - MDS 9120 9140 Standard SAN-OS Software	770311-000	\$0	\$0	0.00%	N/A	N/A	N/A
Cisco - MDS 9140 40-Port FC Switch (SFPs sold separately)	770310-000	\$25,000	\$17,850	28.60%	See Below	See Below	N/A
Cisco - MDS 9216 16-port 2Gbps FC + 1-slot Modular Switch (SFPs sold separately)	770232-000	\$22,000	\$15,725	28.52%	See Below	See Below	N/A
Cisco - MDS 9216 Standard SAN-OS Software	770312-000	\$0	\$0	0.00%	N/A	N/A	N/A
Cisco - MDS 9500 Standard SAN-OS Software	770313-000	\$0	\$0	0.00%	N/A	N/A	N/A
Cisco - MDS 9500 Sup Compact Flash Disk, 512MB	770250-000	\$3,000	\$2,150	28.33%	See Below	See Below	N/A
Cisco - MDS 9500 Supervisor/fabric 1 Primary/Redundant	770248-000	\$21,000	\$15,000	28.57%	See Below	See Below	N/A
Cisco - MDS 9506 1900W AC Power Supply Primary/Redundant	770269-000	\$4,000	\$2,850	28.75%	See Below	See Below	N/A
Cisco - MDS 9506 Chassis Six Slot Chassis	770268-000	\$10,000	\$7,150	28.50%	See Below	See Below	N/A
Cisco - MDS 9506 Power Cord, 250Vac, straight blade NEMA 6-20 plug, US	770318-000	\$0	\$0	0.00%	N/A	N/A	N/A
Cisco - MDS 9506 Power Cord, 250Vac, twist lock NEMA L6-20 plug, US	770319-000	\$0	\$0	0.00%	N/A	N/A	N/A
Cisco - MDS 9509 2500W AC Power Supply Primary/Redundant	770252-000	\$4,000	\$2,850	28.75%	See Below	See Below	N/A
Cisco - MDS 9509 Chassis Nine Slot Chassis	770251-000	\$12,000	\$8,575	28.54%	See Below	See Below	N/A
Cisco - MDS 9509 Power Cord, 250Vac, straight blade NEMA 6-20 plug, US	770244-000	\$0	\$0	0.00%	N/A	N/A	N/A
Cisco - MDS 9509 Power Cord, 250Vac, twist lock NEMA L6-20 plug, US	770245-000	\$0	\$0	0.00%	N/A	N/A	N/A
Cisco - SMARTnet Onsite 24x7x4hrs MDS 9000 16 Port Module	770298-000	\$2,352	\$2,234	5.00%	N/A	N/A	N/A
Cisco - SMARTnet Onsite 24x7x4hrs MDS 9000 32 Port Module	770299-000	\$2,587	\$2,458	5.00%	N/A	N/A	N/A

Cisco - SMARTnet Onsite 24x7x4hrs MDS 9000 Port Analyzer	770302-000	\$340	\$323	5.00%	N/A	N/A
Cisco - SMARTnet Onsite 24x7x4hrs MDS 9216 Switch	770300-000	\$2,091	\$1,986	5.00%	N/A	N/A
Cisco - SMARTnet Onsite 24x7x4hrs MDS 9500 Supervisor	770297-000	\$2,016	\$1,915	5.00%	N/A	N/A
Cisco - SMARTnet Onsite 24x7x4hrs MDS 9506 Chassis	770301-000	\$832	\$790	5.00%	N/A	N/A
Cisco - SMARTnet Onsite 24x7x4hrs MDS 9509 Chassis	770296-000	\$1,120	\$1,064	5.00%	N/A	N/A
Cisco - SMARTnet Onsite 24x7x4hrs MDS 9120 Switch	770317-000	\$2,160	\$2,052	5.00%	N/A	N/A
Cisco - SMARTnet Onsite 24x7x4hrs MDS 9140 Switch	770316-000	\$2,700	\$2,565	5.00%	N/A	N/A
Cisco - SMARTnet Onsite 8x5xNBD MDS 9000 16 Port Module	770291-000	\$1,470	\$1,397	5.00%	N/A	N/A
Cisco - SMARTnet Onsite 8x5xNBD MDS 9000 32 Port Module	770292-000	\$1,617	\$1,536	5.00%	N/A	N/A
Cisco - SMARTnet Onsite 8x5xNBD MDS 9000 Port Analyzer	770295-000	\$213	\$202	5.00%	N/A	N/A
Cisco - SMARTnet Onsite 8x5xNBD MDS 9120 Switch	770315-000	\$1,350	\$1,283	5.00%	N/A	N/A
Cisco - SMARTnet Onsite 8x5xNBD MDS 9140 Switch	770314-000	\$1,687	\$1,603	5.00%	N/A	N/A
Cisco - SMARTnet Onsite 8x5xNBD MDS 9216 Switch	770293-000	\$1,307	\$1,242	5.00%	N/A	N/A
Cisco - SMARTnet Onsite 8x5xNBD MDS 9500 Supervisor	770290-000	\$1,260	\$1,197	5.00%	N/A	N/A
Cisco - SMARTnet Onsite 8x5xNBD MDS 9506 Chassis	770294-000	\$520	\$494	5.00%	N/A	N/A
Cisco - SMARTnet Onsite 8x5xNBD MDS 9509 Chassis	770289-000	\$700	\$665	5.00%	N/A	N/A
Magnitude 3D Controller HBA - 2Gb Fiber Channel	770046-001	\$2,500	\$1,500	40.00%	\$0	0.00%
Qlogic - 2340F 2Gb HBA	770046-000	\$1,650	\$1,320	20.00%	\$275	\$166
Qlogic - 2340- 2Gb PCI-X HBA	770166-000	\$2,056	\$1,645	20.00%	\$343	\$205
SFP 2Gb LWL (GIBC) digital 1 Pack	770263-000	\$2,056	\$1,645	20.00%	\$343	\$205
SFP 2Gb SWL (GIBC) digital 1 Pack	770078-000	\$1,390	\$1,230	11.51%	\$232	\$139
SFP 2Gb SWL (GIBC) digital 4 Pack	770198-000	\$335	\$175	47.76%	\$56	\$34
	770076-000	\$1,200	\$720	40.00%	\$200	\$120

Drives	Part Number	List Price	Texas DIR Product Price	% Discount off List	Service List Price - Per 12 Months	Texas DIR Service - Per 12 Months	% Discount off List
146 GB 10,000RPM Drive	800259-000	\$1,867	\$1,120	40.00%	\$0	\$0	N/A
146 GB 10,000RPM Drive 14 Pack	800343-000	\$24,825	\$14,895	40.00%	\$0	\$0	N/A
36 GB 15,000RPM Drive	800310-000	\$833	\$500	40.00%	\$0	\$0	N/A
36 GB 15,000RPM Drive 14 Pack	800341-000	\$11,083	\$6,650	40.00%	\$0	\$0	N/A
73 GB 15,000RPM Drive	800261-000	\$1,392	\$835	40.00%	\$0	\$0	N/A
73 GB 15,000RPM Drive 14 Pack	800342-000	\$18,508	\$11,105	40.00%	\$0	\$0	N/A
Software	Part Number	List Price	Texas DIR Product Price	% Discount off List	Service List Price - Per 12 Months	Texas DIR Service - Per 12 Months	% Discount off List
3D Cluster Services (2 Node LTU)	800335-000	\$25,000	\$15,000	40.00%	\$3,334	\$2,000	40.01%
3D Control Services	210050-000	\$16,667	\$10,000	40.00%	\$2,000	\$1,200	40.00%
3D Data Services (1.2TB LTU)	800344-000	\$60,000	\$36,000	40.00%	\$15,833	\$9,500	40.00%
3D Data Services (2.4TB LTU)	800344-001	\$79,167	\$47,500	40.00%	\$15,833	\$9,500	40.00%
3D Data Services (3.6TB LTU)	800344-002	\$106,667	\$64,000	40.00%	\$15,833	\$9,500	40.00%
3D Data Services (4.8TB LTU)	800344-003	\$133,333	\$80,000	40.00%	\$15,833	\$9,500	40.00%
3D Data Services (6TB LTU)	800344-004	\$150,417	\$90,250	40.00%	\$15,833	\$9,500	40.00%

3D Data Services (8.4TB LTU)	800344-005	\$193,958	\$116,375	40.00%	\$15,833	\$9,500	40.00%
3D Data Services (10.8TB LTU)	800344-006	\$237,500	\$142,500	40.00%	\$15,833	\$9,500	40.00%
3D Data Services (15.6TB LTU)	800344-007	\$316,667	\$190,000	40.00%	\$15,833	\$9,500	40.00%
3D Data Services (20.4TB LTU)	800344-008	\$391,875	\$235,125	40.00%	\$15,833	\$9,500	40.00%
3D Data Services (25.2TB LTU)	800344-009	\$462,333	\$277,400	40.00%	\$15,833	\$9,500	40.00%
3D Data Services (30TB LTU)	800344-010	\$530,417	\$318,250	40.00%	\$15,833	\$9,500	40.00%
3D Data Services (34.8TB LTU)	800344-011	\$585,833	\$351,500	40.00%	\$15,833	\$9,500	40.00%
3D Data Services Upgrade (1.2TB to 2.4TB)	210054-001	\$28,333	\$17,000	40.00%	\$0	\$0	\$0
3D Data Services Upgrade (2.4TB to 3.6TB)	210054-002	\$26,125	\$15,675	40.00%	\$0	\$0	\$0
3D Data Services Upgrade (3.6TB to 4.8TB)	210054-003	\$25,333	\$15,200	40.00%	\$0	\$0	\$0
3D Data Services Upgrade (4.8TB to 6TB)	210054-004	\$23,750	\$14,250	40.00%	\$0	\$0	\$0
3D Data Services Upgrade (6TB to 8.4TB)	210054-005	\$43,542	\$26,125	40.00%	\$0	\$0	\$0
3D Data Services Upgrade (8.4TB to 10.8TB)	210054-006	\$43,542	\$26,125	40.00%	\$0	\$0	\$0
3D Data Services Upgrade (10.8TB to 15.6TB)	210054-007	\$79,167	\$47,500	40.00%	\$0	\$0	\$0
3D Data Services Upgrade (15.6TB to 20.4TB)	210054-008	\$75,208	\$45,125	40.00%	\$0	\$0	\$0
3D Data Services Upgrade (20.4TB to 25.2TB)	210054-009	\$70,458	\$42,275	40.00%	\$0	\$0	\$0
3D Data Services Upgrade (25.2TB to 30TB)	210054-010	\$68,083	\$40,850	40.00%	\$0	\$0	\$0
3D Data Services Upgrade (30TB to 34.8TB)	210054-011	\$55,417	\$33,250	40.00%	\$0	\$0	\$0
3D Geo-Replication Services (1 Cluster LTU)	210053-000	\$41,667	\$25,000	40.00%	\$3,667	\$2,200	40.01%
3D Geo-Replication Services (2 Cluster LTU)	210053-001	\$81,667	\$49,000	40.00%	\$7,333	\$4,400	40.00%
3D Geo-Replication Services (3 Cluster LTU)	210053-002	\$121,667	\$73,000	40.00%	\$11,000	\$6,600	40.00%
Magnitude Management Service (1 Magnitude)	210055-000	\$16,667	\$10,000	40.00%	\$0	\$0	0.00%

Professional Services

	Part Number	List Price	Texas DIR Product Price	% Discount off List			
Cluster Installation	010015-000	\$11,667	\$7,000	40.00%			
Dimensional Controller Node Installation	010010-000	\$4,167	\$2,500	40.00%			
Fiber Drive Bay Installation	010011-000	\$2,083	\$1,250	40.00%			
Field Installation - Cisco 9120, 9140 Switch	000126-000	\$2,583	\$1,550	40.00%			
Field Installation - Cisco 9216 Switch	000128-000	\$3,250	\$1,950	40.00%			
Field Installation - Cisco Director	000129-000	\$9,917	\$5,950	40.00%			
Field Installation - Fiber Switch	010004-000	\$2,083	\$1,250	40.00%			
ICON Installation	010012-000	\$1,667	\$1,000	40.00%			
Magnitude 3D Administrator Training	000159-000	\$3,125	\$2,500	20.00%			
Magnitude 3D Integration Bundle	000133-000	\$19,167	\$11,500	40.00%			
Standard Shipping	020112-000	\$1,667	\$1,000	40.00%			
Other Hardware Pricing							
	Part Number	List Price	Texas DIR Product Price	% Discount off List	Service List Price - Per 12 Months	Texas DIR Service - Per 12 Months	% Discount off List
Fibre Drive Bay	770056-000	\$7,500	\$4,500	40.00%	\$500	\$300	40.00%
Power Distribution Unit	710103-000	\$665	\$399	40.00%			
Rack AMCO 19" 42U Buyout for Drop Shipment	770035-000	\$2,500	\$1,500	40.00%			



Appendix E

Attachment to Price Lists

XIOtech Corporation agrees to provide shipments on a F.O.B. customer's destination basis. However, we do charge for shipment of our Magnitude Cabinets. The part numbers are listed below. This is noted on the individual price lists.

Magnitude 3D Systems:

Part Numbers: 800345-000, 800346-000, 800347-000, 800348-000

Base Magnitude Systems:

Part Numbers: 800090-000, 800085-000, 800200-000, 800356-000, 800154-000, 800171-000, 800263-000

All other items (future add-ons such as Drives) will not be charged any shipping fees.

Service (XPERTcare Maintenance):

A three-year basic warranty is provided with every Magnitude and Magnitude 3D storage solution. The basic warranty covers parts and labor for XIOtech-brand products for a period of three years. Any third-party product sold with a Magnitude or Magnitude 3D solutions is covered by the original manufacturer's warranty.

In addition to the coverage provided under the basic warranty, XPERTcare offers enhanced software and hardware coverage. Software XPERTcare ensures that customers benefit from the latest storage feature enhancements. Detailed information can be found on the Support Programs Data Sheet under the Products section.

The pricing listed for XIOtech Hardware products is the annual price for XPERTcare after the initial three-year warranty.

The pricing listed for XIOtech Software products is the annual price for the upgrade from our basic warranty to the XPERTcare Service. We recommend all customers upgrade in order to ensure future release-level feature upgrades.

We also offer XPERTcare on a variety of third-party products listed.



Services to be provided in addition to Maintenance:

Magnitude Classic Services

Service Item	Part Number
Accessory Box	640003-000
Certified Magnitude Administrator Training	000156-000
Drive Box	640009-000
Field Installation - Cisco 9120, 9140 Switch	000126-000
Field Installation - Cisco 9216 Switch	000128-000
Field Installation - Cisco Director	000129-000
Field Installation - Expansion Cabinet	000123-000
Field Installation - Fabric Switch	010004-000
Field Installation - Magnitude	010001-000
Magnitude Integration Bundle	000124-000
Magnitude Shipping Crate	640002-000
Processor Tray Bundle	800309-000
Rack Installation (AMCO Rack)	000131-000
Rack Mount Retrofit Installation	010008-000
Re-Installing Expansion Cabinet	000140-000
Re-Installing Magnitude	000139-000
Re-Installing Switch	000142-000
Re-Packing Expansion Cabinet	000138-000
Re-Packing Magnitude	000137-000
Re-Packing Switch	000141-000
SANbuilder Integration Bundle	000132-000
Standard Shipping	020004-000
Up to 4 hours Magnitude Assistance (plus expenses)	000146-000
Up to 8 hours Magnitude Assistance (plus expenses)	020002-000

Magnitude 3D Services:

Service Item	Part Number
Cluster Installation	010015-000
Dimensional Controller Node Installation	010010-000
Fiber Drive Bay Installation	010011-000
Field Installation - Cisco 9120, 9140 Switch	000126-000
Field Installation - Cisco 9216 Switch	000128-000
Field Installation - Cisco Director	000129-000
Field Installation - Fiber Switch	010004-000
ICON Installation	010012-000
Magnitude 3D Administrator Training	000159-000
Magnitude 3D Integration Bundle	000133-000
Standard Shipping	020112-000

**AMENDMENT NUMBER 1 TO THE VOLUME PRICING CONTRACT
BETWEEN THE STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
AND XIOTECH CORPORATION**

This Amendment Number 1 is hereby affixed to and shall become part of DIR Contract No. DIR-BUSOP-023, XIOtech Corporation Contract # 1899, that was executed on March 30, 2004, ("Contract") between the State of Texas, acting by and through the Department of Information Resources (DIR) and XIOtech Corporation (Manufacturer). This Amendment Number 1, as incorporated into the Contract, is subject to all terms, conditions, restrictions and limitations contained in the Contract not in conflict with this Amendment. The Contract is hereby modified as follows:

1. Section 6.D, Responsibility for Reseller Performance and Reporting is amended to include the following:

Manufacturer shall enter into contracts with Resellers and use terms and conditions that are consistent with the terms and conditions of this Contract.

2. Section 6.F, Manufacturer Pricing to Reseller, is deleted in its entirety.
3. Section 6.G, Reseller Pricing to Customer is deleted in its entirety.
4. The introductory paragraph of Section 7, Pricing, is restated as follows:

The price to the Customer for products and services offered under this Contract is based on List Price and includes the discount specified in Appendix E and the DIR administrative fee specified in Section 12, Reporting and Administrative Fees. The price to the Customer shall be calculated as follows:

$$\text{Customer Price} = (\text{List Price} - \text{Discount}) + \text{DIR Administrative Fee.}$$

5. Section 7.A, Customer Discount is restated as follows:

- 1) The minimum Customer discount for all products and services will be the percentage off List Price specified in Appendix E. Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.


- 2) If pricing for products or services available under this Contract is provided at a higher discount to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said products and services to eligible Customers, then the available discounts in this Contract shall be adjusted to that higher discount. This Contract shall be amended in accordance with Section 3, Entire Agreement and Order of

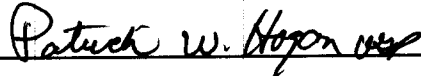
Precedence, within ten (10) days to reflect the higher discounts.

All other terms and conditions of the Contract not specifically modified herein shall remain in full force and effect. This Amendment Number 1 is executed to be effective as of the date of the last party to sign.

XIOtech Corporation

**STATE OF TEXAS
acting by and through the
DEPARTMENT OF INFORMATION
RESOURCES**

By: 

By: 

Name: STEVEN E. SNYDER

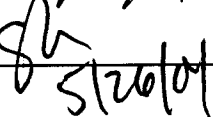
Name: Patrick W. Hogan

Title: CEO

Title: Director of Business Operations

Date: 6.8.04

Date: 5/27/04

Legal:  5/26/04